# Vol. IV

## TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1943

## No. 409

TENNESSEE COAL, IRON & RAILROAD COMPANY, SLOSS-SHEFFIELD STEEL & IRON COMPANY AND REPUBLIC STEEL CORPORATION, PETITIONERS,

*vs.*

MUSCODA LOCAL No. 123, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 4, 1943.

CERTIORARI GRANTED NOVEMBER 15, 1943.

VOLUME IV.

TRANSCRIPT OF RECORD

# UNITED STATES
# CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT.

# No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant,

versus

MUSCODA LOCAL No. 123, ETC., ET AL.,
Appellees,

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Appellant,

versus

SLOSS RED ORE LOCAL No. 109, ETC., ET AL.,
Appellees,

REPUBLIC STEEL CORPORATION,
Appellant,

versus

RAIMUND LOCAL No. 121, ETC., ET AL.,
Appellees.

Appeals from the District Court of the United States for the Northern District of Alabama.

(ORIGINAL RECORD RECEIVED APR. 4 42.)

(Thereupon the affidavit of R. H. Kendrick, and others, was marked Plaintiffs Exhibit No. 49.)

Mr. Burr:
Could you tell me about those others, Jim.

Mr. Harris:
Kendricks hasn't been an officer for two years.

Mr. Burr:
He was at the time the affidavit was made.

Mr. Harris:
No, sir.

Mr. Burr:
That is all; we close.

Mr. Harris:
With the exception of the showing.

The Court:
Yes, sir.

Mr. Harris:
I will look at that during the lunch hour.

Mr. Cooper:
In order that you may be through with these documents, we would like to state our objections to the opinions of the Attorney General. We don't think they are material. We have no objection to any other documents.

Mr. Burr:
You don't object to any except the Attorney General's opinions?

Mr. Cooper:
That is all that has been given us.

Mr. Burr:
We gave them all to you.

Mr. Cooper:
And we have our objections to the opinions of the Attorney General.

The Court:
I have ruled on that.

Mr. Burr:
You did rule on it, and said we could discuss the matter in our briefs.

Mr. Cooper:
But the evidence is excluded now? It is not admitted?

The Court:
Yes, sir.

Mr. Smith:
Your Honor has sustained objection to those at this time?

The Court:
They are not admitted.

Mr. Harris:
And all those letters about somebody in the Immigration Department—

The Court:
I think I will just rule on this. I don't see the necessity of discussing that in the briefs, or in the oral argument,

Mr. Burr:
Yes, sir.

The Court:
On these written documents, I don't see any necessity of having arguments on it orally or in brief, and I will rule on it now.

Mr. Burr:
Your Honor has never seen our authorities. I think you want to see the authorities.

Mr. Smith:
We have to pass on evidence as offered.

Mr. Burr:
You have passed on it.

Mr. Smith:
Then that ends it.

Mr. Burr:
It is there as an offer of evidence.

The Court:
I have sustained objection to it.

Mr. Burr:
Your Honor has not allowed us to be heard except you said I could have five minutes, and then I asked you to permit me to refer to it in my brief, and you said I could. We have never had an opportunity to present it to you, and I am convinced they are legally admissible.

The Court:
I am going to look over them at noon time.

Mr. Burr:

We want you to have a chance to look over the authorities.

Mr. All:

Judge, may I say this? I have said nothing about this particular thing. I don't know how much value our study may have been, but we are certainly honest in our view.

The Court:

I know you are.

Mr. All:

I don't believe our study has been worthless, and we are thoroughly convinced this is admissible testimony on the interpretation of a statute.

The Court:

This is Plaintiffs' Exhibit Number 45?

Mr. All:

Yes, sir.

The Court:

I want to look over this, and then if I want argument, I may ask for it.

Mr. Cooper:

Judge, I call your attention to the fact their motion to produce specifically describes those documents.

Mr. Monaghan:

You are wrong about that. That was the Attorney General's ruling.

Mr. All:

That was all on privilege.

Mr. Cooper:
I beg your pardon. The Court said they were irrelevant.

Mr. Smith:
I beg your pardon. The Court has said it.

Mr. All:
How could he say it without seeing them?

The Court:
I will look over them.

Mr. Burr:
We want a chance to present our argument.

The Court:
How long will it take you?

Mr. Burr:
I don't know. I think I could cover it in a brief in three pages. Why it couldn't go in a brief I don't see. That is the easiest way to get rid of it.

Mr. Harris:
I respectfully submit sooner or later somewhere in the course of a trial the contentions of the various counsel must come to a position when the Court has ruled, and this Court has ruled on this, and the Court offered him five minutes, and he didn't take it.

Mr. Burr:
That is right.

Mr. Harris:
And it is impossible for the Court, or us, to know what to do if things are swept along and carried to the end of the case.

The Court:

Here is the position the Court takes, Mr. Harris:

I want to know what I am doing. I think I know. We make mistakes. Everybody does.

Mr. Harris:

Yes, sir.

Mr. Burr:

Yes, sir.

The Court:

I want to give it some consideration or study.

Mr. Burr:

There isn't a thing in rebuttal that could be offered. These are either admissible evidence or they are not. Your Honor would have plenty of time to pass on that without committing yourself irrevocably now.

The Court:

As I see it, I can take this under consideration and it will not affect you on your proceedings. You can go on with the witnesses.

Mr. Harris:

No, sir.

The Court:

And I will take this under consideration.

Mr. Burr:

We will submit you a little memorandum brief.

The Court:

Could you give it to me this afternoon? You have briefed it, I suppose.

Mr. Burr:

I have briefed it in a way. I have got to be in Court this afternoon.

The Court:

I am going to adjourn until two o'clock.

Mr. Burr:

There are some physical limitations, if the Court please, to what—

The Court:

How long do you want to submit your authorities?

Mr. Burr:

Judge, let me submit it to you Monday. They will be on their evidence long after then.

The Court:

How long will it take you for your evidence?

Mr. Harris:

I am going to make it brief. I would think on my witnesses, unless the cross examination is pretty long, after we get one or two men from each mine, I will be through with the general aspects of the picture, and I think I will be through with my evidence in two days and a half. Of course, I don't know how long Mr. Burr will cross examine. He can make it as long as he pleases by his cross examination. This is said—

Mr. Burr:

Suppose we wait to see how we get along, Judge, and the first recess we get I will give you a memorandum as soon as I can.

The Court:
Mr. Burr, you can give it to me Saturday sometime?

Mr. Burr:
By sitting up Friday night, yes, sir.

The Court:
Well, I will give you until Monday morning. In other words, I want to determine the question while we are still on evidence.

Mr. Burr:
Yes, sir, I will give it to you.

The Court:
That is all for your side?

Mr. Burr:
Yes, sir.

Mr. All:
Of course, it is understood all the way through this evidence is on behalf of each plaintiff?

The Court:
Yes, sir.

Mr. All:
And against each defendant?

Mr. Harris:
No, that is not correct. Mr. Burr stated a while ago he didn't offer something against me.

The Court:
I think you lawyers have taken care of yourselves. I think you have kept the blanket over all of them.

Mr. All:
We have tried to keep that blanket over them.

The Court:
Court is adjourned until 2 o'clock.

(Whereupon, at 12:30 P. M., July 23, 1941, a recess was had until 2:00 P. M. of the same day.)

After Recess, 2:00 P. M.

Mr. Harris:
If the Court pleases, during the noon hour I gave very careful consideration to the two showings which under the federal practice would probably be considered a stipulation as to what a witness would say, and if you have an extra copy so that the Judge could be looking over it I could call Your Honor's attention—

Mr. Burr:
How would it do just to draw parentheses around anything you object to?

Mr. Harris:
Well, I can read to Your Honor—

The Court:
Well, if you will let me check it we can eliminate it without taking up further time.

Mr. Burr:
I gave Judge Smith one. He might use that one. Wait a minute. I have found one.

Mr. Harris:
Your Honor, Mr. Burr and I can go over it right here and see if he is willing to strike it.

Mr. Burr:
Which one have you got?

Mr. Harris:
Vance. Now, this is on page 2 of Vance's statement, beginning with the paragraph, "The making of this contract."

Mr. Burr:
Down to where?

Mr. Harris:
All of that paragraph.

(Discussion off the record between Mr. Burr and Mr. Harris.)

Mr. Burr:
Judge, these two showings, Mr. Harris agreed to parenthesis the portions that he objects, and you can just check it and make your rulings on those portions. Where you sustain the objection I will note an exception and where you overrule the objection he can take an exception. Is that satisfactory?

Mr. Harris:
Yes.

Mr. Burr:
I will commence with numbers. Which one have you got first?

Mr. Harris:
No. 1 on the first page, beginning with the words, "Some of the places that I worked at during my earlier experience were open pit mines. This is true of the ore mines at Greeley and Champion and the dolomite quarry of the Ten-

nessee Company at Ketona," down through the word, "Ketona."

The Court:
Are you objecting to that?

Mr. Burr:
Under your ruling you sustain that?

Mr. Harris:
And it goes down to the bottom of the page. It goes down through, "that is, ten minutes going and ten minutes returning."

The Court:
That is sustained.

Mr. Burr:
The Court sustains the objection to the parts where it is numbered 1, and we except.

Mr. Harris:
Now, on page 3, the paragraph begins, "The witness would further testify that he has read the testimony of E. C. Scott and that the testimony of Mr. Scott as to methods and practices of the underground workers is true."

Mr. Burr:
I put that in there as a matter of shortening the showing.

Mr. Harris:
That is not the proper way to show it. One witness comes along and says, "That is true." Here is my problem, I am losing, as Your Honor will see, the benefit of cross examination and the cross examination in the case always develops facts that are beneficial to the other side.

Mr. Burr:

You have had the benefit of Scott's cross examination.

The Court:

I sustain the objection.

Mr. Burr:

We except.

Mr. Harris:

Then you turn over to the next page beginning with the words, "I know at this time all of the underground miners," from there all the way through that page to the next page, down through the words, "to and from their working places," on the next and very last page.

The Court:

What does that relate to?

Mr. Harris:

Pit mines.

Mr. Burr:

That relates to pit mines with this exception: I leave it down through "miners" and put in there "underground and pit mines," so that he can exclude "pit mines," and leave "underground mines," just that one sentence there. You sustain it as to "pit" and leave it as to "underground"?

Mr. Harris:

Of course, as to Mr. Neal, we had this question up this morning; then it is in there again, that each of them was paid, and he doesn't know that each of them was paid except by hearsay.

The Court:

All right, I will sustain the objection to that.

Mr. Burr:
And we except.

Mr. Harris:
Well, that finishes with Mr. Neal.

Mr. Burr:
We except especially to that portion of No. 3 relating to underground mines.

The Court:
As to underground mines, that is not sustained.

Mr. Harris:
As to where he says he knew they were paid on the working place to working place basis?

The Court:
How does it read, Mr. Burr?

Mr. Burr:
"I know that at this time all of the underground miners were paid in all these mines on the working place to working place basis, and that none of them received any pay for time spent in going to and from their working places."

Mr. Harris:
Well, I am trying to accommodate him so we don't delay, but I can't agree to that. I think it is improper.

The Court:
I sustain the objection.

Mr. Burr:
Now, that is all of Neal's. Now, let's get Mr. Vance's next. Read Vance's.

Mr. Harris:

I have nothing on page 1. On page 2 I have blanks where I understood you are filling in the blanks.

Mr. Burr:

I can fill those in.

Mr. Harris:

That is actual contracts? It leaves the impression that it is an actual contract.

Mr. Burr:

It is an actual contract. That is true of all of those blanks. Here it reads: "T. C. I. Exhibit .... followed meetings which were held in the City of New York, attended by myself and other representatives of the company and by Mr. Reid Robinson, International President of the Smelters Union and other authorized representatives of this union and of the locals of this union at Muscoda, Wenonah and Ishkooda."

Now, here is what he objects to: "The making of this contract was a part of a settlement which was made by the Tennessee Company and the International Union and its locals of charges that were then pending before the National Labor Relations Board. These charges involved the claim on the part of the union that approximately 172 members of their union had been improperly and discriminatorily discharged by the company and were entitled to reinstatement and payment of back wages. At this conference the company agreed to pay in settlement of these claims approximately $102,650.00 and to give re-employment to 138 of these people, and as a part of this same agreement the union and its locals and the company agreed to enter into a written working agreement. The Exhibit T. C. I. No. .... is the agreement which was thus agreed upon and was executed by the parties, this being sub-

stantially agreed upon at conferences held in New York and Chicago and then being agreed upon in final form and executed in Birmingham by the parties whose signatures appear upon the paper."

Now, that is the end of the first parenthesis.

The Court:
What is your reason for objecting to that?

Mr. Harris:
Well, I thought he was going far afield in going into the terms of a settlement.

Mr. Burr:
We didn't go into it except to attempt to state what it was. There is no dispute about that.

Mr. Harris:
Then, of course, that would be a good witness to testify what the settlement was.

Mr. Burr:
That is all right. All right, sir, now, the next one.

Mr. Harris:
The next one is the next immediate paragraph.

Mr. Burr:
That is numbered 1.

Mr. Harris:
That is No. 1. The next one is the following paragraph, the words, "stipulation in reference to" what should be a working day.

Mr. Burr:

I want to put there, "stipulation in the contract, T. C. I. Exhibit ....." Let's read the whole sentence.

Mr. Harris:

"During all these negotiations none of the union representatives at any time requested or suggested that the work day be changed from the existing practice of working place to working place, and the stipulation in the contract, T. C. I. ...., in reference to what the working day should consist of was discussed and agreed upon as a part of the agreement reached and was in the contract as signed."

That is a conclusion that it was done as a part of the agreement reached.

Mr. Burr:

No, sir, it just says it became a part of the contract. It is in there.

Mr. Smith:

The contract speaks for itself.

Mr. Burr:

I know, but all I want in there is that they discussed it and agreed upon it.

The Court:

That is cumulative.

Mr. Harris:

The point that I am particularly thinking about is the phrase, "and agreed upon as a part of the agreement reached." Now, you have got in there the other way, "a stipulation in the contract as to what the work day should consist of was incorporated in the contract as signed."

Mr. Burr:

Well, put in there, "thereupon incorporated." I had just as soon have it that way.

Mr. Harris:

Now, on the next page, still some other blanks.

Mr. Burr:

The next page would be No. 3.

Mr. Harris:

Well, there is that same stuff in there. He says that everything Mr. Ball testified would be true.

Mr. Burr:

As to the negotiations in these meetings.

The Court:

Sustained.

Mr. Burr:

No. 3 is sustained, and we except.

Mr. Harris:

Then in the next paragraph, which would be No. 4, it says, "It was never insisted upon by those presenting the request." Of course, that involves a conclusion whether it was insisted upon or whether it was merely brought up. I object to that.

Mr. Burr:

Just strike out, "insisted upon" and leave it "discussed, brought up for discussion or discussed."

Mr. Harris:

Now, three lines down—the next would be No. 4—the phrase, "and its underground employees have accepted"

payment on the basis of time computed on the working place to working place plan." The phrase, "have accepted payment" carries with it a contemplation which we cannot agree to, if the Court pleases. That is a conclusion of law, whether they accepted it or not.

Mr. Burr:

All right, sir, I except to leaving it, "underground employees were paid on the basis of time computed on the working place to working place plan." There is some conclusion which I think the law allows. I except to that part.

Mr. Harris:

Then on the next page at the top, the same idea we just had, is the phrase, "and have accepted full settlement of their claims on this basis.

Mr. Burr:

Of course, I think—we will agree to except to that. That is 6, isn't it?

Mr. Harris:

That would be 5, the way I have it. That would be 4 you had and didn't take any exception to it.

Mr. Burr:

Yes, I excepted to making the change. No, someone had made it 6. Six is sustained, and we except. Now, the next one.

Mr. Harris:

The bottom of the next paragraph, No. 7, you have this sentence: "These increases in wages would not have been given unless wages had been agreed to by the unions to be computed and paid on the working place to working place basis."

The Court: –
Sustain the objection.

Mr. Burr:
We except to that.

Mr. Harris:
Then you strike out the word, "authorized." Now, the next one is No. 8, where he says at the bottom of that page:

"In performing the duties of my position it has been necessary for me to become familiar and I have become familiar and know of the customs and practices in the other iron ore mines in Alabama, as well as in Minnesota and other sections of the United States, and I know that on October 24, 1938, and for many years previous the iron ore operations of the United States, underground and pit, and in the various parts of the United States all computed and paid the wages of the underground employees on the working place to working place basis, and that they did not pay anything for the time spent in going to and from the working places."

Mr. Burr:
I put in there, "both underground and pit," right after, "United States," "both underground and pit."

Mr. Harris:
Of course, we object to that.

The Court:
What place is that?

Mr. Harris:
"Iron ore operations of the United States, and in various parts of the United States, all computed and paid the

wages of the underground employees on the working place to working place basis, and that they did not pay anything for the time spent in going to and from the working places."

The Court:
Overrule the objection.

Mr. Harris:
Now, the specific objections that I have to this—of course, the pit situation is out any way.

Mr. Burr:
Yes, it is.

Mr. Harris:
The other objection on that is that this man could not possibly know what is going on all over the United States. Now, in doing this I want it clearly understood—because this is a modification of the rules of the Federal Court—we are stipulating that he would swear to that if we had him in here and what he says is true, and we do not by that stipulate we have no right to put on contradictory evidence.

Mr. Burr:
That is just as a showing.

The Court:
Correct.

Mr. Burr:
Now, we can put this one with the file and you can keep your copy.

The Clerk:
We will mark that Plaintiffs' Exhibit No. 50 for identification.

Mr. Burr:

Here is one Mr. Ball didn't testify about. It is shown by two more pages of testimony. You can check it.

Mr. Harris:

Well, there is no reason to bring anybody back to prove the contract, or that they are operating on the basis of 1941.

Mr. Burr:

Note what the definition of the day's work in this contract is. This is portal to portal.

"The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch or rest periods as provided for in (b) above, whether they be paid for the day or be paid on the tonnage basis, less such traveling time as is reasonably necessary for the employees to go to and from their usual working place; such traveling time starting when the employee is required to report for transportation at the entrance of the mine and ending when he returns to that point."

Then it goes ahead and,

"It is understood that the above inclusion as a part of the day's work of the traveling time reasonably necessary for the employee to go to and from his usual working place has been herein agreed to by the company in compliance with the opinion rendered by the Administrator of the Wage and Hour Division of the Department of Labor, which becomes effective on May 1, 1941. The company denies the correctness of said opinion. Suits are now pending for the judicial determination of this question. It is, therefore, agreed that if and when there is a final judicial interpretation (this agreement then being in exist-

ence) overruling or modifying the opinion of the Administrator or in the event the Administrator changes his opinion or the law is amended, the question of whether or not the definition of the workday herein agreed to shall thereupon be changed so as to comply with the Court's decision or the law as interpreted or amended shall immediately become a question for negotiation, and, if not settled between the parties by such negotiations within thirty (30) days after such final judicial interpretation or change or amendment has occurred, neither of the parties hereto shall be further bound or obligated by the definition of the day's work as herein contained."

The Court:
That will that be, 40?

Mr. Burr:
The showing is Plaintiffs' Exhibit 50 and this will be 51.

Mr. Harris:
Of course, as to this one we waive the predicate. I still have my customary objection to the contract.

The Court:
Of course. That is understood.

Mr. Burr:
I gave you both of the showings, didn't I?

Mr. Harris:
Just one for Vance.

Mr. Burr:
Which one have you got?

Mr. Harris:
I have got Vance's.

The Clerk:
And Neal.

Mr. Harris:
You will have to let the reporter correct them after you marked them because you dictated some changes, didn't you?

Mr. Burr:
No, they are written. I wrote them in there with pencil.

(Thereupon, said showings for the witnesses J. F. Vance and George B. Neal were marked for identification Plaintiffs' Exhibits 50 and 50-A, respectively.)

The Court:
Is that all?

Mr. Burr:
Yes, sir, that was all. We are through, of course.

The Court:
We are now ready to go into the testimony of the defendants.

Mr. Harris:
May I have the exhibits that were introduced?

The Court:
How are you going to proceed with the examination? Is each counsel going to examine the witnesses?

Mr. Harris:
The idea that I had in mind—of course, I haven't had a chance for a full discussion—you know we have all been working day and night—the idea I had in mind was to put

on my witnesses on behalf of the unions and the individuals and then at the end of a couple of days if I am tired I can switch and somebody else can put on something and give me a chance to rest for a day or a half if I would like to do it for a half day. I haven't talked with Mr. Spencer or Judge Smith or with Mr. Quinn. If they prefer to put on their evidence first, I have no objection. Whatever you gentlemen want to do is perfectly agreeable.

Mr. Smith:

We had made our arrangements to put on our witnesses after Col. Harris. We haven't got them here. We have got them on call. These people are working. When we started out, his case coming first on the original complaint, I thought probably he came first, and in deference to the intervener I agreed that when we started here that he should come first and we should come in the next order. So it may be that after Col. Harris gets through we can cut down our witnesses considerably because I imagine that there will be a great deal of duplication in the testimony, from what I understand.

The Court:

I don't want any duplication in the examination of witnesses from one side.

Mr. All:

Well; we won't have that over here.

The Court:

In other words, if Col. Harris examines a witness I don't want other questions asked that he has been over.

Mr. Smith:

No, sir. We will avoid that and have done it all the way through the trial.

Mr. Brody:

In the order of questioning, Judge, it is agreed that we would follow Col. Harris. We would not want to put on any witnesses ourselves at this time, but reserve the right to ask any additional questions.

Mr. Harris:

And unless the Court orders me to, I don't want to agree to put on and go straight on through, unless some of these gentlemen want to ask questions.

The Court:

That is all right. I don't believe there will be any objection.

Mr. Burr:

No, sir, there will be no objection to handling it, on my part, any way these gentlemen see fit. I would like to make this request: I would like to know as far ahead of time as to what mine they propose to use particular witnesses from. For instance, Mr. Harris states he proposes to use witnesses from Ishkooda this afternoon. If we can do that it will keep men working and he can have his men here.

Mr. All:

Mr. Harris, can you tell us what witnesses you are going to use tomorrow morning, that is, what mine?

Mr. Harris:

I don't know how far along we will be before we adjourn. We have got an hour and a half. I can tell you this afternoon when we get through. I can let you know then.

Mr. All:

You have got no order that you expect to call the witnesses as to mines?

Mr. Harris:
You mean as to companies?

Mr. All:
As to mines.

Mr. Harris:
Yes, I think I have. This is subject to modification because I want to consult with the other gentlemen. It is my inclination to take up all of the mines of the Tennessee Company and finish with them.

Mr. Burr:
Do you have Ishkooda first and then will your next one be Muscoda or Wenonah?

Mr. Harris:
I don't know which it is we have here. I will let you know before I leave. Then as to the Sloss Company or the Republic Company, as to which I will put on our witnesses first I do not know.

Mr. All:
Give us a half day's notice.

Mr. Harris:
I think I can do that all right.

The Court:
All right.

Plaintiffs rest.

2291 EVIDENCE ON BEHALF OF DEFENDANTS.

Mr. Harris:

The first thing I want to introduce, if the Court pleases, is the Rule Book of the Tennessee Coal, Iron & Railroad Company for the month of March, 1937, heretofore marked for identification Defendants' Exhibit No. 1, and that portion of the rule book which is found on page 35:

"Penalty: Violation of any of the above rules shall be subject to the following penalty.

"First violation: Strong reprimand by superintendent of the department.

"Second violation: Suspension for not less than three days and not more than ten days.

"Third violation: Discharge."

The Court:

That is on page 35, you say?

Mr. Harris:

That is on page 35. Then on page 43, Rule 15:

"All men must use regular travelways provided, and not haulage slopes, when traveling through the mines."

I will identify another section of that, under the subdivision, Rules for Drillmen, on page 39, paragraph 3:

"3. The drillman must go into the mine on the first man-trip at the beginning of each shift and shall be the first employee to enter the working face.

"4. The drillman must personally examine the roofs, ribs and working faces by means of a hammer and bar and with the assistance of the section helper, quarry down all dangerous ground."

The Court:

It will be what number for the Defendants' Exhibits, what exhibit?

Mr. Harris:

It will be our Exhibit No. 1. Then there was a penalty on page 40, which was the same as I had read above, and another penalty on page 44, which is identical.

Now, as to the exhibit—

Mr. Burr:

Just a minute. Are you through with that one?

Mr. Harris:

Yes.

Mr. Smith:

If Your Honor pleases, while we are on that exhibit, we have got the identical books and the identical rules marked. Suppose Your Honor considers it as to ours, A. F. of L. along with it. That will keep down a duplication.

Mr. Burr:

Offered by all defendants.

The Court:

Yes, all the defendants join in the offering of the exhibit described by Mr. Harris.

Mr. Smith:
Yes, sir.

The Court:
It will be so considered.

Mr. Burr:
All right, sir. Now,—

The Court:
Does the plaintiff have any objection?

Mr. Smith:
That will be considered in?

The Court:
Yes.

Mr. Burr:
The plaintiffs separately and severally object to the rule book as a whole and also object to each portion of it that has been offered and read.

The Court:
Overruled.

Mr. Burr:
And take an exception, separately and severally. Now, then, since the objection has been overruled, there are other rules in here that we will probably want to call attention to. The whole book is in and we can call attention to this on rebuttal when we get on it. That is all on that.

(Thereupon, said rule book of the Tennessee Coal, Iron & Railroad Company, March, 1937, was admitted in evidence as Defendants' Exhibit No. 1.)

Mr. Harris:

Now, for Defendants' Exhibit No. 5, for identification, December, 1938, the magazine "Ore Miner," we offer. I will have to mark the pages with pencil because they are not numbered.

The Court:

You say the article is what?

Mr. Harris:

It is a publication by the Tennessee Coal, Iron & Railroad Company.

The Court:

I know that is the publication.

Mr. Harris:

The article is not identified in any way, and if I may be permitted to number the pages with pencil—

Mr. Burr:

Give me the date of the publication first.

Mr. Harris:

This first one is of December, 1938. I didn't notice, Your Honor, that these pages were not numbered.

The Court:

Maybe they are at the bottom.

Mr. Harris:

I don't find any number at all. I also call particular attention—I offer in evidence, if the Court pleases—I started and numbered the pages on one side only, 1, 2, 3, on up—of the issue of the Ore Miner, marked "Safety," December, 1938, issue 36, that page marked No. 3 with its words and illustrations; on page marked No. 5, over

on the right-hand side, headed—there are two columns on the page—headed, "Skip accidents," page No. 6 for the illustrations as to the method of work done—not the language of the poem—and then on page No. 8, right-hand column, entitled, "Underground Fire Hazards." I think you gentlemen have seen each one of those.

Mr. Burr:

And plaintiffs separately and severally want to object to the newspaper as a whole and to each separate and several portion that is referred to as appearing on the separate and several pages 3, 5, 6 and 8, and each illustration and sentence appearing in those places.

The Court:

Overruled.

Mr. Burr:

And we take an exception, separately and severally, on behalf of each of the plaintiffs to each separate and several matter objected to.

Mr. Harris:

That will be our Exhibit No. 2. It was marked for identification as No. 6, but it is actually marked—

The Court:

That will be Exhibit 5.

The Clerk:

This will be No. 5.

Mr. Burr:

Yes, the correct exhibit number, the next paper was 5.

(Thereupon, said copy of the December, 1938, issue of The Ore Miner, containing the articles referred to above, was marked for identification as Defendants' Exhibit No. 5, and admitted in evidence.)

Mr. Harris:

Then as to the next exhibit, marked Defendants' Exhibit No. 6—coming back to the rules on page 52 of the same rule book that has been introduced in evidence under the main topic, Main Slopes, Skips and Cages, we offer the paragraphs reading as follows:

"1. No one must get on the man skip or cage while it is in motion or until eight bells signal has been given and permission to get on has been given by the man in charge of the skip. No one must get off of the man skip or cage until it comes to a dead stop."

Riding on Skips, No. 2:

"2. Riding on skips is strictly prohibited except on regular man trips and in emergency cases, and then only on authority of mine foremen."

That is No. 2.

Mr. Burr:

Of course, we have the same objections and exceptions.

The Court:

The same rulings.

Mr. Burr:

As we had on the other.

Mr. Harris:

As to the issue of The Ore Miner dated February, 1940, Defendants' Exhibit No. 6, we offer the photographs and

language on pages marked No. 4—the mark is down at the lower right-hand corner of the page—we offer the article on page No. 7, the last—we offer that page and particularly call the Court's attention to the last paragraph on the page, on page 7, and then on page 8—that continues on page 8, the left-hand column on that page. We offer those, separately and severally.

Mr. Burr:

And we make the same objection to that in the same way that we made to the other issue.

The Court:

The same ruling.

Mr. Burr:

Of The Ore Miner, and the separate parts offered.

(Thereupon, the articles in the February, 1940, issue of The Ore Miner on pages 4, 7 and 8, were marked for identification as Defendants' Exhibit No. 6, and admitted in evidence.)

Mr. Harris:

There will be some other issues of those, but I don't know whether the pages have been marked and I will see that it is done so that I don't have to take the time of the Court to mark them. We have some more here.

Mr. Patterson.

2296 E. T. PATTERSON, being called as a witness, and having duly affirmed, testified as follows:

The Court:

What are your initials?

The Witness:
E. T.

The Court:
Swear him.

The Clerk:
He doesn't swear.

The Court:
Do you affirm?

The Witness:
Yes, sir.

Direct Examination.

(By Mr. Harris):

Q. What is your full name, Mr. Patterson?
A. Edward Travis.
Q. How old are you?
A. Thirty-five.
Q. Are you a graduate of any university or college?
A. No, sir.
Q. Are you a graduate of a high school?
A. No, sir.
Q. How high did you go in school?
A. Went to the seventh grade.
Q. How long have you been working under Red Mountain cut here?
A. Around eighteen years.
Q. What was the first work that you did in the ore mine?
A. Track helping.
Q. About how long did you work as a track helper?
A. About three months.
Q. What mine was that?

A. Songo, over here at the Woodward Iron Company.

Q. Then what work did you do underground?

A. Went from there to track foreman.

Q. Was that at the Woodward Iron Company?

A. Yes, sir.

Q. How long were you track foreman, approximately?

A. Around a year, I guess.

Q. And then what did you do?

A. I went from that to timber foreman.

Q. With the Woodward Iron Company?

A. Yes, sir.

Q. How long were you timber foreman with them?

A. Just a short while, about a month or so.

Q. Then what did you do?

A. I went to—from this particular mine I went to the No. 2 mine of the Woodward Iron Company.

Q. How long did you work at that mine?

A. About three months.

Q. In what capacity, what kind of work did you do?

A. Worked with the contractor, just mucking.

Q. Was that hand mucking or machine mucking, machining ore?

A. Hand mucking.

Q. How long did you work as a hand mucker or first mucker, as they call it at Woodward?

A. About three months.

Q. Then where did you work?

A. I went to the Tennessee, the T. C. I.

Q. About when was it that you began working for the Tennessee Coal, Iron & Railroad Company?

A. September, 1926.

Q. Have you worked for any other company since September, 1926, as an ore miner in iron ore mines, other than the Tennessee Company?

A. No, sir.

Q. Now, when you went with the Tennessee Company in September, 1926, what work did you first do with them?

A. Went to work as a night watchman.

Q. How long were you a night watchman, Mr. Patterson?

A. Around a year. I can't say positive.

Q. Then what did you do?

A. Inside of No. 13 mines as a little hoisting engineer, developing hoist.

Q. Now, 13 is at Ishkooda, isn't it?

A. That is right.

Q. And how long did you work at Ishkooda as a hoisting engineer on a little hoisting engine?

A. I couldn't—

Q. All right, then after—if you don't remember how long it was, why then what did you do after that job, what kind of work did you do for the Tennessee Company?

A. Well, for a short time I pipe helped and then I would catch extras, rapping.

Q. Catch what?

A. Extras, rapping.

Q. What do you mean by that? I don't understand you.

A. Skip tender.

Q. How long did you work as a skip tender?

A. I just worked extra as a skip tender.

Q. Then after you had worked as a skip tender what did you do?

A. They transferred me to No. 11 mine as a timber foreman.

Q. Do you remember what year it was you became a timber foreman?

A. No, sir, I do not.

Q. Do you know how long you worked as a timber foreman?

A. Approximately a year.

Q. And then what did you do?

A. I went as a driller.

Q. In No. 11 or No. 13?

A. No. 11.

Q. Were you a head driller then or a drill helper, which were you?

A. I was a driller; a drill runner. I had a helper under me.

Q. About how long did you work as a driller at No. 11 of the T. C. I.? Are you still working at that kind of work?

A. No, sir, I am not a driller now. Approximately four or five years as a driller.

Q. Then what did you do?

A. I went as a section foreman or, as it is now, head miner.

Q. You are a head miner now?

A. Yes, sir.

Q. At no. 11?

A. Yes, sir.

Q. Well, how long have you been head miner at No. 11?

A. Since 1937, I believe it is. I wouldn't be positive.

Q. Well, that is about four years as head miner or section foreman at No. 11. How many men do you have or did you have under you when you started to work in 1937?

A. I had six.

Q. Did you continue to have six under you up until May 1st of this year?

A. Yes, sir.

Q. The number has stayed the same?

A. Yes, sir.

Q. Now, do you—and I am going to ask you to think, if you can—I am not asking about anything that happened since May 1, 1941. The time that I will be asking you about until I change it is from October 24, 1938, up to May 1st, this year. That is the time I am talking about from now on unless I change. Now, in that period from October 24, 1938, to May 1, 1941, were you head miner on a

day shift merely or on a day shift part of the time and a night shift part of the time?

A. A day shift part of the time and a night shift part of the time.

Q. Was there any regular system by which you changed from day shift to night shift?

A. We changed from day shift to night shift from—Saturday would be our last day shift and Sunday night would be our first night shift.

Q. In other words, you would work a week of day shift and the next week of night shift and keep alternating?

A. Yes, sir.

Q. Now, then, at the No. 11 mine of the T. C. I. did you and the members of your crew have any kind of brass checks issued to you by the company?

A. Yes, sir.

Q. Did you get those checks when you were employed, and did they have a number on them?

A. When we were employed we got a badge number and when we went to the check-in house to check in why they gave us a check-in number, a brass check.

Q. So your badge number was when you were first employed, first had employment there?

A. Yes, sir.

Q. And then when you went to check in you got also a brass check?

A. Yes, sir.

Q. And you kept both your badge number and your check, your brass check?

A. Yes, sir.

Q. Now, in October, 1938, on up until May 1, 1941, what time of day did you and the other members of the day shift report for work at the No. 11 mine?

A. Six o'clock.

Q. How far was the tally house from the mouth of the mine?

A. Approximately one hundred feet.

Q. When you reported for work at the beginning of your shift did you use your brass check?

Mr. Burr:

Just a minute, Mr. Harris. We don't want our silence to consent to that word. "At work" is the proper word to use. I have got no objection to using that, where it is subject to cross examination, but that is a question we have got here to determine, when he reported to work.

Mr. Harris:

Whether it was compulsory by the company at the time, that question was asked.

Mr. Burr:

I think the facts are what we want, Judge. He can use that term but I want the Court to know that it is used with our insistence that that is not what it is. We insist that he reported at the loading station.

The Court:

All right.

Mr. Harris:

The same way, Judge, Mr. Burr used "working place" all the way through.

Mr. Burr:

You objected when I did and I am returning the compliment. We are even on that.

Mr. Harris:

All right, we are fifty-fifty on that.

Mr. Burr:

Yes.

Q. You reported for work at six o'clock and did what with your brass check, Mr. Patterson?

A. Carried it and deposited it either at a window to the tally man, or hung it up myself on the nail that I used.

Q. Now, as head miner did any of the men in your crew turn over their brass checks for you to hang up, or did they have somebody else at the tally house to take their brass checks?

A. Some turned it over to me and some—they have an assistant mine foreman who is the one that checks them in and they have to lay their brass in at the window and the assistant mine foreman checked those in.

Q. Now, when you handed in your brass check at the beginning of the day shift did you have to wait, or did the other men have to wait, when you handed in your check for the mine foreman to say something or to acknowledge that he had got it, or did the man put the check on a counter or in a bucket, or, as you sometimes did, hang it on a nail? My question is this: Could the men walk up and put the check there?

Mr. Burr:
Just a minute.

Q. Did they?

Mr. Burr:
I think he can tell what the men did. You can just tell what they did with the checks.

The Court:
Ask him whether they did or not.

Q. Tell whether or not the men walked up and put the checks on the counter and then walked away, or whether they waited for the assistant mine foreman to pick up the check before they walked away?

A. They walked up and put their brass in at the window and the assistant mine foreman would pick it up and hang it on a nail.

Q. Then after putting the check in at the window did the men who reported at six o'clock, at the same time that you reported, did they, from October 24, 1938, up until May 1st, did they immediately start down the mine all in a bunch, or did they go in different groups?

A. Well, they went in different groups, on different mantrips.

Q. Was there any person standing there at the mantrip to tell the skip tender when to start, or tell the men when they had enough for a load? Did the mine foreman or assistant mine foreman stand there as the men got into the skip?

A. Usually the skip tender is the one that gave the orders when they had a load or when they did not have a load.

Q. Now, that skip belonged to the Tennessee Company, didn't it?

A. Yes, sir, so far as I know.

Q. What is that?

A. So far as I know.

Q. The skip tender wasn't hired by you or any of the men under you or on your crew, was he?

A. No, sir.

Q. And when you got to the bottom of the skip during those three years, were you then haled to another part of the mine, or did you get out of the skip at the man unloading station and walk?

A. We got out at the unloading station and walked.

Q. Now, when you were coming out of the mine, you were going to come out and get your check at the end of the shift, was there any order in which a man got on the skip to come out?

A. Yes, sir, we had a man loading station and as the men came in to this station they got in rotation; whenever

his turn came he got out into the skip and loaded up and was carried.

Q. Did the company have any employee there directing the men as to when there were enough to fill the skip or telling the skip tender when to pull out with a load?

A. Yes, sir. The assistant mine foreman did the loading of the men on the inside.

Q. Now, in No. 11 mine, in coming out, did the men have to pass through a little chute or a gate to get into the skip?

A. Yes, sir.

Q. And did the assistant mine foreman stand at that gate?

Mr. Burr:

We had rather that you ask what the assistant mine foreman did than state it in the question.

Mr. Harris:

All right.

Mr. Burr:

I think it is the best way to let the witness testify.

Mr. Harris:

All right. I think we have proceeded along that line all the way through, Mr. Burr.

Mr. Burr:

Yes, we did, and I let you do it to save time.

Mr. Harris:

I permitted you to do it.

Mr. Burr:

All right, sir.

Q. Did the assistant mine foreman stand there at the chute, at the man loading station and direct the men in coming up and loading and coming out of the skip as they came out of the mine?

A. He did. He counted the men as they came out of the unloading—out of the chute.

Q. Was that skip at No. 11 made out of wood or iron or steel? What was it made out of?

A. It was made of iron.

Q. In your experience out there did the assistant mine foreman of the Tennessee Company ever tell you what skip to get on, going into the mine or coming out?

A. The mine foreman has.

Q. The mine foreman. Do you recall any occasion out there in which you didn't want to ride a certain skip and the mine foreman talked to you?

A. Yes, sir, there was one time—I don't remember just the date—I got inside of the skip and the rapper overloaded the skip, in my opinion, that it was crowded very heavily, and I crawled out of the skip and told him I would wait on another, and he said that I could either get in the skip or get my brass, so I told him he could hand me my brass if he wanted me to go back. I never did get that brass.

Q. Now, let's get the actual—this is not a photograph of the actual skip that you have in that mine. We have no pictures of Ishkooda, but I think it is substantially the same skip. Was the skip that the men traveled in at No. 11 from October 24, '38, to May, 1941, built like that?

A. Yes, sir.

Q. In your judgment, is that a fair representation of the skip that you all rode down in the mine in?

A. It is.

Q. Are you still using one like that out there?

A. Yes, sir.

Mr. Harris:

We offer this as an illustration for the benefit of the Court of the kind of skip that they were using and the general type they were using at that time, and ask the clerk to mark it.

The Clerk:

It is No. 11.

Q. Now, I show you another photograph of that skip with the pictures of men standing in it and other men jumping in it, or another man jumping in it. Is that the way that you get in the skip at No. 11?

Mr. Burr:

You mean the picture shows the way they get in it?

Mr. Harris:

How is that?

Mr. Burr:

You mean the picture shows the way they got in?

Mr. Harris:

Yes.

Mr. Burr:

All right, I don't object to the way the picture shows.

A. Something similar, the station. It shows that we have got a little farther distance to step than that.

Q. You mean—

A. From the loading platform, into the skip.

Q. But what I am trying to get at was the way the men got in the skip.

A. That is it.

Mr. Harris:

We offer this as our next exhibit.

The Clerk:

Defendants' Exhibit No. 12.

Q. Now, at your No. 11 operation is it a place where you step on to the skip, that is, the top of the side wall; was the top of the side wall at No. 11 even with the place where you would be standing, or was it above the place where you would be standing or below?

Mr. Burr:

Just a minute, Mr. Harris. Your Honor will recall that in the beginning of this case when Mr. Ball was first asked questions of this kind that we objected and the Court overruled the objection and then, of course, following the Court's ruling we offered evidence on it. And with the understanding that I am objecting to each of these questions on the same grounds that I objected in the beginning, that is, on the question of the kind or character of the haulage or the equipment used and the method used, has no relevant bearing on the issues that we have to consider, just to save time we would like to have an understanding that we have an objection, so I won't have to interrupt you. Is that satisfactory with the Court? If there is anything special I will bring it out.

The Court:

Yes. Overrule the objection.

Mr. Burr:

And we may have the understanding that we have the objection all the way through?

Mr. Harris:

What you want is everything that has to do with all conditions in the mine?

Mr. Burr:

That is right. I take the position that that is something that hasn't got anything to do with the matter under consideration.

The Court:

I don't recall, Mr. Burr, what testimony you offered..

Mr. Burr:

On cross examination Mr. Harris went into it and I objected to it and Your Honor overruled my objection.

The Court:

I guess I misunderstood the question.

Mr. Burr:

No, sir. I just didn't want you to think I was waiving my objection.

The Court:

Yes, that is understood, and with that understood I am overruling your objection and you will have an exception.

Mr. Harris:

You will have an exception, if that is the purpose, to that kind of questions, and in that way we will save an enormous amount of time.

Q. How far was the place where you step at No. 11 above the top of the skip?

A. It was below the top of the skip. On the upper end was about a foot and a half or two feet and the lower end was about even with the top.

Q. In other words, instead of jumping down into the skip you climbed up into the skip, is that what you mean?

A. On the front end, but the distance from the skip to the platform was approximately two and a half feet.

Q. So that you had to step over a two-and-a-half-foot gap there to get from the place where you were standing to the top of the skip. Now, during the period of time, October, '38, to May, '41, what was the average number of men put in there on each mantrip that you rode on, what was the skip load, what was the average haul?

A. Approximately thirty men.

Q. And those thirty men, did they have a place to sit or did they have to stand?

A. They didn't have a place to sit and they had to scrouge in there the best way they could get in.

Q. Now, in riding down that skip and riding out did the men stand erect or did they crouch over?

A. They humped over and squatted down.

Q. Was that true throughout the entire course of the skip, or were there places where they stood erect?

A. Yes. About—just before they reached the mouth coming out there was approximately seven or eight hundred feet, probably, they could raise up and get straight.

Q. Did the men ride spoon fashion in the skips at No. 11?

Mr. Burr:

We object to that.

A. I didn't understand you.

Mr. Burr:

We object to the definition that Mr. Harris seems to like so much—spoon fashion. He has some very picturesque language that he gets in as being leaping and jumping and spooning. Of course, I don't think it has any effect, but I rather object to it.

The Court:

Well, he is not talking about that kind.

Mr. Burr:

We will let Your Honor go down and see it. We would be glad to have you do it.

Mr. Harris:

Judge, I am going to object to the Court going into any of these ore mines.

The Court:

I am not going.

Mr. Burr:

You wouldn't have to go into it to see any of the skips. You can see them on the outside.

Mr Harris:

Let me have Mr. Taylor and Mr. Butler and another man. Well, you would make the third man. Mr. Butler, come up. You are not with the T. C. I., though; you are with the Republic. All right, Mr. Scruggs.

Mr. Burr:

He is a Republic man. No, he is with the Tennessee Company.

Mr. Harris:

Your Honor, I had already had them do that in my office so that I would know how they rode, to bring Your Honor the illustration.

Mr. Burr:

I don't know that we want a result of practice.

The Court:

All right, go ahead.

Mr. Burr:

Just so you tell them to do it like they do it on the skip, and not like they did it in your office.

The Court:

Come to order.

Mr. Harris:

Now, will you men stand or take the position that you take going down on the skip at No. 11, when it has the full load that Mr. Patterson mentioned?

(The three men illustrate by squatting down in a row, the second man directly behind the first and the third man directly behind the second.)

Mr. Harris:

Your Honor, I don't see anything to laugh at.

Mr. Burr:

No, I beg Your Honor's pardon.

Mr. Harris:

I admit we are all nervous, but I don't admit it is a matter of laughter.

Q. Now, then, Mr. Patterson, when you got off the skip —or, rather, I will change the question: Did you have any property of your own besides your clothes when you got on the skip at the beginning of your shift?

A. No, sir.

Q. Was the carbide light your property or the property of the Tennessee Company?

A. The carbide light was my property.

Q. You had to buy the carbide lamp yourself?

A. Yes, sir.

Q. And the carbide, you bought that from the company?

A. Yes, sir.

Q. Now, did you make any investigation anywhere to see whether the company sold it to you at cost or as cheap as you could buy carbide elsewhere?

Mr. Burr:

We object to the form, of the question, whether he made any investigation or not.

Mr. Harris:

Why, if the Court pleases, he has had man after man to testify—

Mr. Burr:

That is no way to prove that they didn't buy it at cost or didn't sell it at cost. If it is your purpose to show that you could get it cheaper, I have no objection to it.

The Court:

If he knows.

Mr. Harris:

I will change the question.

Q. Do you know, of your own knowledge, whether or not the company sold it to you at cost?

A. No, sir.

Q. Did you buy any carbide anywhere else from October, '38, up until May 1, '41?

A. No, sir.

Q. Could you mine ore in the mine of the Tennessee Company, No. 11, without a carbide light?

A. No, sir.

Q. Did you and each member of your crew and the other men who went underground have carbide lights?

A. Yes, sir.

Q. Has that been true the whole time from October, '38, to May 1, 1941? At any time from October up to May 1st has the Tennessee Company furnished you carbide free?

A. No, sir.

Q. I suppose they did furnish you the picks and shovels that you worked with, or did you have to buy those?

A. They furnished those.

Q. And did they furnish the drills and jackhammers and wedges, or did you have to buy any of those?

A. They furnished those.

Q. Well, was there anything else that you had to have in your mining operation, your work as a miner, for which you paid, other than carbide; was there anything else that you used as a miner that you paid for, which was charged to you, besides carbide?

A. Nothing only clothes or safety shoes.

Q. How about powder, was the powder charged to you at the T. C. I.?

A. No, sir.

Q. Or dynamite. The powder and the fuses were not charged to you out there. Now, you say safety clothes were charged to you?

A. Safety shoes, when we bought them.

Q. What is a safety shoe? How is that built?

A. It is a shoe that we were required to wear underground. It has a steel toe in it, and we have to wear those. It is orders that we can't go down inside without a pair of safety shoes on.

Q. Well, is that steel toe on there for any kind of work you do with your feet, or is it there as a safety measure for your feet?

A. It is a safety measure.

Q. How far does this steel cap come back from the tip of your toe on your foot over in these safety shoes?

A. It is just in the cap of the shoe, in the cap of the toe.

The Court:
Under the leather?

The Witness:
Yes, sir.

Q. Do you buy the steel cap and put in there or do you buy that shoe with the cap already in there?

A. We have to buy the shoe with the cap already in there.

Q. Does the Tennessee Company sell you that shoe, or do you have to buy them somewhere else?

A. The company sells them.

Q. When you report for work at the beginning of a shift at six o'clock or do you know what skip you are going to be allowed to ride on, or did you from October 24, 1938, up until May 1st?

A. No, sir.

Q. And when you got off at the man unloading station at the bottom of the main slope, during the period from October to May that I have mentioned, did you proceed directly to the heading or stope where you had been drilling the day before, or did you go by any other particular place for any sort of supplies?

A. Well, at times very often we would go by what was called the tool house, or I would give orders for my men to go by and get various pipe fittings and hose pipes, hangers, wedges, and drill or jackhammer steel, or things of that sort.

Q. Well, did you, during these three years, that period of time, carry your jackhammer steel or wedges or C-hooks on the skip with you as you went down, did you take them on the skip with you, did you ever take any tools during that three years?

A. At times we have. When we were short of hangers they would straighten hangers up that went through the crusher and they would be laying out there and the mine

foreman would tell us we could get some of those and we would carry them down on the skip.

Q. What about wedges, did you carry wedges down on the skip?

A. No, sir, I haven't.

Q. Were the hangers straightened up or repaired at a blacksmith shop on the top or down under the ground?

A. They must have been on top.

The Court:

I didn't hear that, Mr. Patterson.

The Witness:

They must have been on top because they would be lying up on the surface when we would ask about hangers and wedges.

Q. Did you use any oil in your drilling operations?

A. Yes, sir.

Q. Did you have to squirt that oil into the different places in your drill, or did you have an automatic lubricator where you could pour the oil and it would automatically flow?

A. We had an automatic lubricator.

Q. And how much oil would your automatic lubricator hold?

A. Around a quart.

Q. And in an ordinary day's drilling, how many times would you fill that lubricator?

A. About once or twice a day.

(A short recess was then taken.)

Q. Mr. Patterson, I wasn't clear as to your answer to the last question or the last statement you made about your mine foreman or assistant mine foreman telling you to pick up hangers. Did you pick up those hangers out on

the surface before you jumped into the skip, or did you pick them up at some place after you got out of the skip?

A. The new hangers, hangers that were made and sent inside to a box, and the wedges were put in those boxes, and when my men wanted wedges or hangers or jackhammer steel they would come to me on the outside whenever they would walk in and tell me that they needed such and such a tool to work with, and I would go to the mine foreman or assistant mine foreman and tell him that I needed such things, and he would tell me to go inside and get them or go by the tool house and get them and carry them on as we would go to our working place.

Q. Now, then, they would tell you outside before you all got in the skip?

A. Yes, sir.

Q. And you would tell the mine foreman or assistant mine foreman before you got in the skip?

A. Yes, sir.

Q. And he would then tell you where to get them?

A. Yes, sir.

Q. And did you have any place where you got them at the man unloading station or near the man unloading station?

A. That place was—the man unloading station was one heading and right below that place why we picked up our jackhammer steel, hangers and wedges and other fittings, for drills and tripods and such.

Q. Now, since October, 1938, and from that time up to May 1st, have you and your crew worked in more than one heading, during the past three years?

A. Yes, sir.

Q. What different headings have you worked in during the past three years?

A. The first one was 65 right, No. 11 mine; the next was 63; the next was 67; the next was 68; the next was 2nd left, northeast, and the present heading that I am working in now is 1st right.

Q. Well, from October, '38, up to the present time has the heading or stope in which you have been working kept moving farther from the man unloading station, or has it moved back and forth so that you would be working closer at one period and farther at another period; they would alternate, I mean?

A. You mean the one that I am working now?

Q. No, I mean for the whole three years have you walked an increasing distance as you would finish one heading or one stope and take up another one, has the length of your walk increased?

A. It has.

Q. How far were you walking from the man unloading station three years ago to get from the man unloading station to your heading or stope, how far would you walk, approximately?

A. Approximately three thousand feet, I guess.

Q. And at the present time how far, that is up to May 1st, say during the month of April or the month of March, how far were you walking from the man unloading station to your heading or stope?

A. Well, at the time I was in 2nd left I couldn't hardly estimate that distance, but that was the farthest distance because I would go from 64 down through to the fault down to the pocket and then from the pocket approximately five thousand feet, I guess.

Q. You know, I suppose that five thousand two hundred and eighty feet make a mile, would you say?

A. No, sir, I didn't.

Q. You didn't know that. Well, was it approximately a mile, in your judgment, that you walked?

A. No, sir, it wasn't that far. It was a quarter of a mile, I guess, from the pocket. I walked about—from the unloading station to the 2nd left was approximately a half mile.

Q. Now, when you were doing that walking during these three years were you walking on level ground or

rough ground? Tell the Court what kind of footing you had as you walked from the man unloading station to your stope or heading.

A. Well, part of the way we went down what was called a manway over three or four headings, and that was where the pipe lines, the various pipe lines and water lines and electrical wires and different things were overhead, telephone wires and so on. We had to go under and stoop under and cross over and walk over pipe lines. In some cases we had water running down the manway—slippery. When we reached the level where they have piping why we went over a motor—a track that the traveling motor goes over, which the ties are spaced about two feet apart.

Q. Well, do you mean that you climbed up a place and then went down, or was that a level place that the ties were spaced two feet apart?

A. It went down about that pitch in some cases; in some cases a little more.

Q. And then after you passed that place how was the footing on up to your heading or stope?

A. Well, after we passed that place into the headings that we worked in we had a regular track for the cars to run on that we walked in, and then after that we went into the stopes up where we drilled, or the face, why we walked over muck and ore.

Q. Now, in taking that walk from the man unloading station did you or any member of your crew carry oil for this automatic lubricator and your drill, or was the oil brought up to your drilling place and furnished you there by the company?

A. They have an oil house or a place that they keep oil. It is not a house. It is setting out open just across from this place that we get our tools.

Q. Right near the man unloading station?

A. Yes. And then go by there and get oil. Usually they bring the cans up in the afternoon and carry them back in the morning.

Q. What size cans are ordinarily used to carry that oil back?

A. One-gallon cans.

Q. Now, how long, in your judgment, would one of those drills run if you didn't use that oil on it? In other words, how long would it take it to run hot and get where you couldn't drill at all if you ran completely out of oil and kept on running your drill?

A. Approximately six hours.

Q. You mean without any oil at all in your drill, you could operate it for six hours, in your opinion?

A. Yes, sir, that is right, for six hours without it stopping on you. You couldn't operate it without endangering it that long.

Q. Now, in drilling does the air pressure in your air pipe or the air pressure that comes into your drill have anything to do with the cutting speed of your drill?

A. Yes, sir.

Q. In your experience as a head miner and driller, what is the air pressure on your drill that gives the best results, within what limits?

A. Around eighty-five pounds, your usual—I have noticed the gauge. We have a guage on the main line. Of course, we haven't a guage in the heading. Approximately at the beginning of the working place there is a gauge and around eighty-five to ninety pounds is what it is.

Q. Now, suppose that your air pressure dropped down as low as fifty pounds, what effect would that have on the speed with which the drill went into the ore body?

A. Well, it would cut it down considerably.

Q. When you first get into the vicinity of your drilling place on your morning shift what is the very first thing that you as a head miner customarily do when you first get there?

A. The first thing when we get into the working place?

Q. Yes. When you get up to the face what is the first thing you do in the morning?

A. We examine the roof and rib and see that there is no loose stuff or dangerous top over us.

Q. How do you make that examination, Mr. Patterson?

A. By means of using a steel bar.

Q. Now, tell the Court how you use that steel bar. What do you do to it or with it?

A. Well, when we go into a place after blasting—why we blast out the face of the ore and it leaves ore in some cases thick and not loose ore, and then we go into that and then overhead there is in most cases a ledge of sand rock about so thick and that occasionally gets loose and we timber it as we come up, and after we pass those timbers into that place we take that bar and go over the roof to sound to see whether or not it has got dead since the last evening.

Q And does it have what you call a drummy sound if it is loose?

A. Yes, sir.

Q. And it is your job as a head miner to check that the very first thing after arriving at the face?

A. Yes, sir.

Q. Whether it is day shift or night shift?

A. Yes, sir.

Q. Now, was it in a place like that out in a manway, that two men were killed Saturday?

Mr. Burr:

We object to that question, if Your Honor please.

The Court:

I sustain the objection.

Q. The manways, the place where you—

Mr. Burr:
Your Honor excluded that, did you?

The Court:
Did he answer it?

Mr. Burr:
No, sir. The question is what I am objecting to.

The Court:
I sustained the objection.

Mr. Burr:
The question, the form of it, is what I am objecting to. I just want it excluded; that is all.

The Court:
I sustained the objection to the question and it wasn't answered.

Mr. Burr:
All right, sir. That will do.

Q. Now, then, Mr. Patterson, as you walk along from the man unloading station to the face you bent over to illustrate while you are passing under those wires and cables. Are you able to stand erect after getting beyond those wires and cables in going up to your face, or do you have to bend over any more?

A. We do stand erect after we get into the working place.

Q. Well, what distance is it—suppose you were leaving the face and going out to the man unloading station, for what distance could you walk before you had to begin stooping over or dodging the roof or cables or anything else?

A. That would be hard to say because all along up the walking places why we have occasion to stoop over and then we can walk maybe a heading or two and then we raise up.

Q. Now, have you worked in any other ore mines at all in the last fourteen years besides the T. C. I.?

A. Yes, sir, I worked at Woodward.

Q. Well wasn't that more than fourteen years ago that you worked out there? You are thirty-five.

A. Yes, sir, it was in '23.

Q. Now, you haven't been, have you, in any of the other mines besides the T. C. I.?

A. No, sir.

Q. Have you been in the Sloss mines or the Republic mines?

A. No, sir.

Q. In working underground there at this T. C. I. mine suppose you or your men have to go to the toilet, where are the closets with reference to the face of the mine?

A. Well, in my place why we just—well, in most of the places we would go right into an old working right close to where we are at. In the place that I am in now most everybody uses the place above me or one right out in front of me, where the man fan circulates the air right through this way through in a circle around through northeast and comes back through east into 1st right, back down to the main slope.

Q. Now, did they have any arrangements in No. 11, any privies or holes cut in the earth, or any water closets, or anything of the sort, at which all of these men working down under there just go and stop at some—any place they had there in the mines?

A. They go just any place that they wish.

Q. Has that situation been going on during the three years that you have been working out there?

A. Yes, sir.

Q. How far do you travel on your journey from the man unloading station before you detect any bad odors of this kind?

A. Well, you can detect that at the man unloading station.

Q. At the man unloading station. Has that been true all the time that you have been working out there, I mean since October 24, 1938?

A. Yes, sir.

Q. Have you been on any committee that was negotiating with the Tennessee Coal, Iron & Railroad Company for the unions since you have been working for them? Had you met with Mr. Ball when you were negotiating or discussing wages or any other matters?

A. Not on the contract. On this first negotiation that I was in was in Chicago when this hearing was in Birmingham, of the 1936 strike.

Q. You went up to Chicago?

A. Yes, sir.

Q. Well, now, have you ever heard the phrase "undesirable" used out there at the mine?

A. Yes, sir.

Q. When was the phrase "undesirable" first used out at No. 11, so far as you know?

A. It was after the strike of 1936, when the incentive plan went into effect, that we accepted the Governor's proposal that we go back on a trial of the incentive plan. Through this it was understood that the men would be placed back to work as they came off.

Mr. Burr:

We are going to put a special objection, if Your Honor please, to trying anything in reference to that case. It was settled and disposed of. It took nine months, I think, to get rid of it. It has got nothing to do with this case.

Mr. Harris:

If the Court pleases, maybe it is in Ball's testimony—

Mr. Burr:

No, what you are talking about is in Mr. Vance's testimony. He said they settled it. Now, what you are doing is going behind the settlement.

Mr. Harris:

I made a motion—

Mr. Burr:

All right, I withdraw the objection. I would rather do that than to take up time. If he wants to go into it, let's travel on it. As long as Your Honor has got patience we will go ahead with it.

Mr. Harris:

Well, I am going to ask the Court to adjourn in three or four minutes, if it is agreeable with the Court.

The Court:

I am going to in a while.

Mr. Harris:

And if it is agreeable with the Court, I will start with this witness in the morning.

The Court:

It is four o'clock, isn't it, 4:05?

Mr. Harris:

Yes, sir.

The Court:

Court is adjourned until 9:30 tomorrow morning.

(Thereupon, at 4:05 P. M., July 23, 1941, Court adjourned until 9:30 A. M., July 24, 1941.)

July 24, 1941, 9:30 A. M.

Court met Pursuant to Adjournment.

The Court:
All right, proceed.

2326 E. T. PATTERSON resumed the stand and testified further as follows:

Direct Examination—Resumed.

(By Mr. Harris):

Q. Mr. Patterson, when did you join the union, International Union of Mine, Mill and Smelter Workers?

A. In August, 1933.

Q. Have you been a member of that union from that time on up to the present time?

A. Yes, sir.

Q. Have you been an officer of any local of that union?

A. Yes, sir.

Q. What official position have you held with the union?

A. First I was Executive Board Member and after '36 I was elected as President of the Ishkooda Local.

Q. Are you President of the Ishkooda Local now?

A. No, sir.

Q. How long were you President?

A. Approximately two years.

Q. What official position, if any, do you hold with Ishkooda Local now?

A. I am Executive Board Member.

Q. In 1936, when the incentive plan was put into effect by the Tennessee Company were you then a head miner or a drill operator?

A. I was a drill operator, I believe. I wouldn't be positive.

Q. At that time, just before they put in the incentive plan, were there or not nine men in a crew with the mechanical loaders?

A. There were.

Q. And then immediately after they put in the incentive plan how many men were in the same kind of crew at the same place, doing the same work?

A. Seven.

Q. When this plan was presented in 1936 did the men work under it and then go out on a strike, or did they go out on a strike before working under it at all?

A. They went out on a strike before working under it at all.

Q. Now, after the strike was over, how long—in 1936 I am talking about—did the Tennessee Company operate? Did they shut down shortly after the strike was over, or was it when the 1934 strike that they shut down shortly after it was over?

A. It was 1934, and some time after the '36 strike they shut down for a short time. I don't know just when.

Q. Now, did anybody from the Tennessee Company ask you for your approval of the incentive plan before they put it into effect?

A. No, sir.

Q. In 1936, after the strike, did the membership of your Local Union increase or decrease?

A. Decreased considerably.

Q. And then in 1937 did the membership of your Local Union increase or decrease, during 1937, the next year?

A. It continued to decrease.

Q. About how many members prior to this strike in 1936 did you normally have in attendance at a meeting of your local; that was before the '36 strike?

A. Well, on various occasions—

Mr. Burr:

Your Honor understands I don't want to interrupt, but I am objecting to all of this line of questions.

Mr. Harris:
We understood your objection.

The Court:
Overruled, and exception taken to the questions.

A. At times sometimes we would have one hundred and sometimes it would be up around three hundred or four hundred.

Q. Now, then, in the year 1936, after the strike was broken, what did the attendance, the average attendance, after the strike was broken amount to?

A. Well, right after the strike we would sometimes have one hundred members, and then on as we continued on why it dropped down to as low as twenty-five members.

Q. Was that in '36 it did that?

A. Well, it goes on into '37.

Q. In '37. What was it during '37, was the average attendance at the union meetings of your local?

A. Well, the average attendance would be around ten.

Q. Around ten. And now, then, after the Fair Labor Standards Act went into effect in 1938 did the membership attendance at your local start increasing, or did it continue as it was in '37?

A. After the settlement of the undesirables our membership started increasing in '38.

Q. Now, who were the undesirables?

A. The undesirables were men that the company left out of the—whenever we taken the incentive plan under trial.

Q. You mean that they were men who had been working for the company before the incentive plan went into effect and they were dropped by the company as soon as they put the incentive plan into effect?

A. Yes, sir.

Q. Now, were these men who were dropped as soon as the incentive plan went into effect men who were mem-

bers of the International Union of Mine, Mill and Smelter Workers, or were they members of a company union, or were they men that were not members of any union?

A. They were all members of the International Union of Mine, Mill and Smelter Workers.

Q. Now, did they drop, as soon as they put that incentive plan into effect, did they drop from the employment rolls any men who had been officers or were officers in the union?

A. Yes, sir.

Q. And do you recall how many, approximately how many men who had been active in union work were let off when the incentive plan went into effect?

A. Well, at Ishkooda Division there was approximately thirty-five.

Q. And how many of that thirty-five that the company let out would you say were officers of the Union?

A. Approximately five of them.

Q. Five?

A. Yes, sir.

Q. Five of the thirty-five were officers of the union. Now, when was it that the matter of the undesirables was taken up by you or by anybody else in your presence with the officers of the Tennessee Company, or of the Steel Corporation above the Tennessee Company? I will change it, if you don't understand it. Were you ever at any meeting with any officers of the Tennessee Company or of the Steel Corporation where the matter of the undesirables was taken up?

A. No, sir, other than the last conference that we had in Montgomery with the Governor, when we called the president of the company in down there, I was in.

Q. Was that in '36 you are talking about, or '38?

A. It was in '36 or '37, I don't know just when.

Q. Now, then, did you attend a meeting in Chicago?

A. Yes, sir.

Q. Well, who was present at the meeting in Chicago?

A. To my best recollection, was myself and Mr. McDaniel, Mr. Van Jones, Mr. Bill Mitch and Mr. Lemley, old man Lemley—I don't know just what his initials are—and Frank Allen.

Q. Frank Allen is a colored man?

A. Yes, sir.

Q. And who else?

A. And Lee Pressman, the counsel for the C. I. O.

Q. Now, who was present from Birmingham representing the Tennessee Coal, Iron & Railroad Company?

Mr. Burr:

I want them all. I don't know whether he had given them all or not.

Q. Is that all that you remember on the union side?

A. That is all I remember.

Q. Now, then do you remember who was present for the Tennessee Company at that meeting in Chicago?

A. Mr. Vance. I believe that is all that I can recall.

Q. All right. Do you remember the names of any man or any men who were there from the head offices of the United States Steel Corporation?

A. Yes, sir.

Q. Who were they?

A. Mr. Moses, the Vice President of the Raw Material.

Q. Now, at the Chicago meeting was the matter of the undesirables discussed?

A. Well, it was discussed of the ways and means of paying off the undesirables and we were offered a settlement and a contract whenever it was drawn up, for the ore miners.

Q. All right. Did you have a separate paper dealing with the undesirables, or was the matter of the undesirables in the contract itself?

A. We had a stipulation dealing with the undesirables.

Q. Do you recall whether or not that stipulation was written into the document or whether it was a separate paper?

A. It was a separate paper.

Q. Now, was that document handed to the union men by the representatives of the company, or was it handed by the union men to the representatives of the company, in Chicago?

A. It was handed to the representatives of the union by the company.

Q. Have you in your files a copy of that stipulation, that side agreement, about the undesirables?

A. I haven't but I presume that the district office has one.

Q. Now, coming back to the work in the mines: After you as head miner finished drilling your holes from the period October 24, 1938, up to May 1st of this year, could you shoot whenever you wanted to, or did you have a regular time set by the company for shooting?

A. We had a regular time set by the company.

Q. And if you finished drilling your holes before that time did you have to wait until the time arrived before you could shoot?

A. We did.

Q. During that period could you leave the mine any time you wanted to, or were you required by the company to come out on a man trip?

A. We were required to come out on a man trip.

Q. And in coming out on that man trip and getting to the top at the end of your day's shift did you then pick up your brass check at the tally house?

A. We did.

Q. How long did it take to get your brass check back, how many minutes would you say that it took you on day shift to get all their brass checks back when they came to the tally house?

A. Well, to take—for the whole crew?

Q. Yes.

A. Well, that would be hard to say. I can say it in this way, that the one drag, took each skip load at the time.

Q. All right, how long did it take a skip load to get their brass checks at the end of the shift?

A. It would take the skip load approximately eight to ten minutes.

Q. I believe you said that when you tossed them on the counter going down it only took a minute or so?

A. Yes, sir, it taken—in going down it would take the whole crew, they can check in the whole crew in ten minutes.

Q. You mean the entire day's shift?

A. Yes, sir.

Q. Can check in in ten minutes?

A. Yes, sir.

Q. But coming out a skip load would take ten minutes to check out?

A. Yes, sir.

Q. What is meant by the phrase "narrow work" in ore mining in the Birmingham district?

A. Well, narrow work is a development where they are advancing a place and they carry it on narrower than they do stope work. Narrow works run in the Tennessee Company's mines from twelve feet to twenty feet and stoping runs twenty-five feet.

Q. Stoping, then, is the place where you are doing the work for the express purpose of getting out the ore?

A. Yes, sir.

Q. And narrow work, as I understand it, is work that you are doing not merely to get out the ore that you are moving but to get into a further portion of the ores so that you can open up different stopes?

A. That is right.

Q. Now, in mining during the years you have worked for the Tennessee Company can a crew produce more ore in narrow work or in stoping?

A. In stoping.

Q. Since May 1, 1941, in your mine out there, has the Tennessee Company been doing more narrow work or less narrow work than it did before?

A. Well, I couldn't say.

Q. Well, in your crew, how about your crew?

A. Well, in my crew practically the same as it was before.

Q. The last two months in your crew you have done the same amount of development work that you did for two or three months before May 1st?

A. Yes, sir.

Q. You don't know about the work in the other mines or other divisions of the Tennessee Company?

A. No, sir.

Q. Now, have you ever worked in those other mines at all; have you ever been in the other mines?

A. None other than No. 13.

Q. Now, during the years that you worked for the Tennessee Company what was the manner in which you were paid; when pay day came how did you get your pay?

A. They usually post notice of the pay days and on that day we would go to the office. We would obtain what they call a statement, and we signed that statement, or got that statement and signed and tear off a small portion of it on the bottom where it says, "This to the Paymaster," and carry that in and give it to the paymaster and we kept the shorter portion of it for ourselves and we would obtain our money on that.

Q. Now, then, when you go to get your money is that when they tear off one portion and keep a portion?

A. Yes, sir.

Q. When you actually got your money?

A. After we signed we tear off the small portion and throw it in at the window for the paymaster and then he takes it and gives us our money in return.

Q. All right. Now, in paying and doing your work there did they have a certain hour on a certain day when they paid you, or could you go any time you wanted to get your pay?

A. They had certain hours.

Q. During this—did they have a pay window where the men lined up?

A. Yes, sir.

Q. What time of day did they usually start payment, or did they have any set time?

A. Since May 1st they have changed it to 1:15 when they start paying off and up until 3:30, I believe, is the last time.

Q. All right. Now, before May 1st what time of day were you paid?

A. Started at 11:00 o'clock and paid until 12:00, and then after—start back at 2:00, I believe it was, and paid until 4:30, I believe.

Q. Now, has any officer or representative of the Tennessee Coal, Iron & Railroad Company since October 24, 1938, when the Fair Labor Standards Act went into effect, has any such officer or representative ever told you that in signing the paper and getting your pay that you were giving up any rights under the Fair Labor Standards Act law?

A. Have not.

Mr. Burr:

Of course, we object to that, in addition to the objection we have had all the time.

The Court:

Overruled.

Mr. Quinn:

What was his answer? I didn't catch it.

Mr. Harris:
Have not.

Q. Did any officer or representative of the Tennessee Company tell you, after October 24, 1938, that if you continued to sign receipts as you did in the years before that they would use those receipts as a claim against you, if you made any claim for wages under the Fair Labor Standards Act?

Mr. Burr:
The same objection, if Your Honor please.

The Court:
Overruled.

Mr. Burr:
Exception.

A. No, sir.

Q. Do you recall whether you have read those receipts from October 24, '38, until May 1, '41?

Mr. Burr:
The same objection.

A. No, sir.

The Court:
Overruled.

Mr. Burr:
Exception.

Q. Does that look like one (indicating)?

Mr. Burr:

What is the Exhibit number, so that we will know what you are talking about?

Mr. Harris:

This is Tennessee—it looks like it is V and Y, Tennessee Exhibits V and Y.

Q. Does that look like the kind of thing that was handed you and you tore off and signed a paper?

A. It does.

Q. Has that same kind of thing been used all the years you have been working out there?

A. Yes, sir.

Mr. Harris:

I believe that is all for the witness, Your Honor.

The Court:

All right, cross examination.

Mr. Harris:

I suppose that if anybody on our side wants to—

The Court:

Do you want to ask any additional questions?

Mr. Harris:

—ask any additional questions, we will follow the same plan we did with them.

Mr. Cooper:

We don't have any questions.

The Court:

All right, Mr. Burr:

Mr. Burr:

Have you got any questions?

The Court:

No, they have none. Cross examination.

Cross Examination.

(By Mr. Burr):

Q. Mr. Patterson, I believe you said that before the 1936 strike you were a drill man or drill operator. What was that position you had?

A. I think that was what I was. I was off and on head section foreman and drill operator. I wouldn't be positive just which one of them.

Q. Your best judgment; your last occupation before the strike, before you went out on strike, was a drill operator?

A. That is right.

Q. Now, then, after you went back to work under this settlement you have talked about that was made in Chicago, since then I believe you said you have been a head miner?

A. Yes, sir; I went back after the—right after the '36 strike.

Q. As a head miner, and you have been a head miner ever since?

A. Yes, sir.

Q. And you are a head miner now?

A. Yes, sir.

Q. All right, sir. Now, I want to ask you some questions about the general practices and then I will ask you about some particular things that you say happened occasionally. I want to ask you about your own practice, not anybody else's. Now, the first place you went to before you went to work was the bath house on the company's premises, isn't it?

A. Yes, sir.

Q. Now, that bath house is about how far, in your judgment, from the mine entrance?

A. I imagine about five hundred feet.

Q. About five hundred feet. When you go to work you take your clothes off and put them in the hanger—you have got a hanger or a locker system?

A. Locker.

Q. A locker. You carry a key to your locker?

A. How is that?

Q. Have you got a key or just an individual locker?

A. Individual locker. Some have locks and some don't.

Q. How about you, did you have a key, or not?

A. No, sir.

Q. I am talking about you all the time.

A. No, sir, I haven't got a key.

Q. Well, you will hang your street clothes in that locker?

A. That is right.

Q. And put on your work clothes and then you went on and walked to the place where you got your carbide?

A. Yes, sir.

Q. Is that the next thing you did?

A. Yes, sir.

Q. Now, that carbide you got in cans, didn't you?

A. Yes, sir, in pound cans.

Q. In pound cans. And about how much carbide, about how long does a can of carbide last you or did it last you since you were a head miner?

A. About two days.

Q. About two days. Would you say that was about the average that it would last others?

A. Yes, sir, I use about as much as they do.

Q. About as much as any of them. So you wouldn't have to buy your carbide every day; it would be about every other day or every third day, something like that?

A. No, sir, about every other day.

Q. About every other day you would buy your carbide. And where was the carbide, how close was it to the place where you left your check when you went into the mine?

A. Right in the same building.

Q. In the same building?

A. Yes, sir.

Q. That is what is called the tally house, isn't it?

A. Yes, sir.

Q. Right in the tally house. Well, the company always had a man there to give you the carbide?

A. Yes, sir.

Q. You would turn in an old can and get a new one, would you?

A. That is right.

Q. And then he had a memorandum there that he would take your number and charge you with that can of carbide?

A. That is right.

Q. And that would take just a very few seconds, wouldn't it?

A. Yes, sir.

Q. Just kind of hesitate and go on, hand in a can and get your can and leave?

A. Go on.

Q. Now, then, you were asked about whether or not you knew whether or not that was sold you at cost, and I believe you said you didn't know about that?

A. No, sir, I do not.

Q. You hadn't priced it anywhere else?

A. No, sir, I have not.

Q. No, rules of the company or no instruction of the company ever told you that you had to get it there at that place?

A. Well, when I first went to work for the company I bought carbide very often and I didn't get carbide at the tally house and I was cut carbide, and I went in and asked

the clerk why I was cut and he said it was there for me, if I didn't get it it was my fault.

Q. Now, when was that?

A. That was about a year after I went to work.

Q. Well, how long ago was that?

A. About thirteen years ago, or fourteen. I mean twelve or thirteen.

Q. Twelve or thirteen years ago?

A. Yes, sir.

Q. And who was the clerk, do you remember?

A. Mr. Hugh Strong, I believe.

Q. Mr. Hugh Strong, and you have gotten your carbide there ever since?

A. Yes, sir.

Q. Now, is that the only one that ever told you anything about the carbide?

A. The only one I recollect, the only one I ever went to.

Q. Did you take it up, make any complaints about these cuts of carbide that you didn't get?

A. Only this particular man.

Q. Well, did you go before that, or not?

A. No, sir.

Q. Was that the end of it?

A. Yes, sir.

Q. And that occurred about thirteen or fourteen years ago, you say?

A. About twelve or thirteen.

Q. Now, when you were at Woodward where did you get your carbide?

A. I bought carbide in twenty-five-pound cans.

Q. You would buy it anywhere you pleased?

A. Yes, sir, I bought it anywhere then.

Q. Well, have you ever, since you have worked for the Tennessee Company, bought carbide anywhere else except to buy it at the Tennessee Company?

A. Other than the first that I mentioned.

Q. Other than the first you mentioned. You have never worked in any mine anywhere any time that the miner didn't furnish his carbide and furnish his lamp; that has always been furnished by the miner, hasn't it?

A. Everywhere that I have worked.

Q. That is what I say, everywhere you have worked, any mine, anywhere?

A. Yes, sir.

Q. Just like he furnishes his clothes; he furnishes his clothes, doesn't he?

A. Yes, sir.

Q. And he furnishes his shoes, a part of his clothing?

A. Yes, sir.

Q. Now, you said something yesterday about safety shoes, that had some kind of safety tip on the toe.

A. Yes, sir.

Q. Do you know whether or not those shoes are sold to you at cost by the company?

A. No, sir, I was not.

Q. Have you ever priced them anywhere else?

A. Yes, sir, I have.

Q. Whereabouts?

A. Simmons' in Bessemer.

Q. Where?

A. At Simmons' in Bessemer.

Q. Did you get some there, or not?

A. Yes, sir, I got one pair.

Q. After that you got them or bought them at the company?

A. No, sir. I haven't bought any more from the company since I got that pair.

Q. Since then you have been getting your safety shoes from Simmons?

A. I haven't bought but the one pair.

Q. It has lasted until now. Well, did anybody object to your wearing those shoes?

A. Did anybody object to me wearing those shoes?

Q. Yes; you have been wearing them?

A. Yes, sir. No, sir, there hasn't anybody objected.

Q. And you are still wearing them?

A. Yes, sir.

Q. Now, as I understand, what they are for, Mr. Patterson, there is just a steel tip that is on the inside of it that protects your toe from anything, any rock that might fall?

A. Yes, sir.

Q. No matter where you get them, that is what they are for?

A. That is right.

Q. And that is what you use them for. Now, the next thing that you do—I am talking about you individually—you would go and pick up the check, or, as you said yesterday—I don't mean pick it up—turn in your check as you go to work?

A. (Witness nods his head.)

Q. That is done, at the tally house, is it?

A. Yes, sir.

Q. Now, this check—what is your bade number now, check number?

A. 5728.

Q. What date—how long have you had that number, about how long have you had it?

A. About fourteen years.

Q. And you have been using it the same way ever since?

A. Yes, sir.

Q. When you worked at Woodward did you use check numbers, or not?

A. Yes, sir, we used check numbers.

Q. Used them in the same way that you did at the Tennessee Company, practically?

A. Practically the same thing.

Q. So ever since you have been mining you have used these check numbers in substantially the same way?

A. Yes, sir.

Q. Now, the check number is the same number that appears on the statement that you get?

A. That is right.

Q. Along with your name; has all of these years?

A. Yes, sir.

Q. You have that in your pocket, I suppose, as you come up to the tally house, do you not?

A. Yes, sir.

Q. And, as you said yesterday, you either just pass it in to the assistant mine foreman or the mine foreman or lay it down and you sometimes hang it up yourself on your hook?

A. As a head miner I just hang it up myself.

Q. Hang it on your hook and go on down?

A. No, sir, I don't go on down.

Q. You stay there, do you?

A. Yes, sir.

Q. You don't go down with the first crew?

A. I stay there to see that my men are checked in and see if I need an extra man.

Q. You stay to see if you have a vacancy in your crew. That is the way you handle it?

A. That is the way I handle it.

Q. Other miners handle it differently?

A. I don't know about others.

Q. But you want to see that your crew is there; you are interested in the incentive earnings?

A. That was the instructions that we had after I went in as head miner, after the incentive plan went in, that we check our men in.

Q. Who gave you those instructions?

A. Mr. Cameron.

Q. Where did he give them to you?

A. He gave them to us at the office.

Q. All of you there together?

A. He called in all head miners.

Q. He called in all head miners. Just exactly what did he say to you?

A. He told us we were selected as head miners and we were to see that our crews were checked in and see after our crews, check them in and see after them, that was our duty.

Q. Tell me everything Mr. Cameron said, now. He called all of the head miners into his office together, did he?

A. Well, he called what he had selected at that time.

Q. That is what I am talking about.

A. And told he—

Q. Now, just tell me everything he told you.

A. He said that we were selected as head miners at No. 11 and we would select our crews and turn them in to him.

Q. You would select the members of the crews?

A. Yes, sir, and turn them in to him.

Q. All right.

A. And after we had done that why we were given our crews and then he told us—

Q. Now, wait a minute. Is this a separate time? Have you told me all that he told you at this first time when you said you had been instructed to turn in the names of the crews?

A. Well, that is all that I can recall.

Q. In either of the two times?

A. Well, when we came back down —

Q. Well, let's get through with the first time.

The Court:

I think you are interrupting him. I think you ought to let him go ahead and answer the question.

Mr. Burr:

That is what I am trying to do.

The Court:

There wasn't anything said about two conversations until you asked him about it.

Q. I understood you to say it was two times that he talked to you. Is that right, or not?

A. The first time we were called into the office. We were told that we were selected as head miners and that we would select our crews, and that we were turned loose at that time.

Q. Is that all he said at that time?

A. At that time.

Mr. Burr:

That is what I understood, Your Honor, that there were two conversations. That is the reason I was trying to get them separated.

Q. Now, at that time he told you that you had been selected and to select your crews. Of course, you selected your crews from the employees; you couldn't go outside to get a man or anything of that sort?

A. No, sir.

Q. He gave you a chance to pick your crews that you wanted to work with, did he not?

A. Yes, sir.

Q. Now, that was all of that conversation. Now, then, what was the next conversation in which he told you about your duties? That is the one I am interested in.

A. Well, after we brought these crews back he had some lists of men, stricken off some of these men, and then I had to select from a sheet that he had there other men, and after this selection he gave me the crew and he said, "You see—" to see after these men.

Q. I want you to tell everything he said to you.

Mr. Harris:

Judge, he can't tell everything at once.

The Court:

Let him alone. I agree with you. I think you are interrupting. Let him go ahead and say. He just told you what he said.

Mr. Harris:

Right then you began to ask him a question.

Mr. Burr:

I asked him to tell everything.

The Court:

Let him tell it.

Mr. Burr:

Your Honor said I was interrupting.

The Court:

I did and I repeat that statement. It is true, because when you asked him at out the second time he hadn't said he had finished that conversation. He hadn't, in other words.

Mr. Burr:

Your Honor, he clearly indicated to me there were two conversations. What I am trying to get at is everything that was said.

Q. You have told us everything that was said in the first conversation, Mr. Patterson?

A. Yes, sir, as I recollect.

Q. Now, I want you to tell everything that was said in the second conversation.

Mr. Harris:

Now, just like that, Mr. Burr says every two seconds "Tell everything. Tell everything. Tell everything."

The Court:

Just let him go ahead and tell it.

Mr. Harris:

Take all the time he wants.

The Court:

If he knows, and get through.

A. And we presented the names of the men in our crews, then we had a list that he had stricken off some of the men that I had in my crew, and he handed me a list and said that I could pick me those men for the crew. So I did that, and I handed these to him, and he said, "You see that these men are checked in, and the vacancies on your crew; that is what you are supposed to do at the beginning of the shift."

Q. Is that all he said?

A. That is all I can recall right at the present.

Q. To see that these men are checked in at the beginning of the shift?

A. Yes, sir.

Q. All right, sir. When you left to go down to the working place yourself on the skip, did you make a practice of riding on any particular skip, or did you catch the second or third or whichever one you wanted to?

A. I usually caught the skip after I found out my whole crew was checked in, while I would catch the next skip, possibly.

Q. By checking in, you mean they had deposited their checks?

A. That is right.

Q. Now, you said that you sometimes deposited them for them, or they would deposit them with you, is that right?

A. Sometimes they would bring their checks to me and sometimes come in by the window and leave them with the mine foreman and he would hand them in for me.

Q. Sometimes bring their checks to you and sometimes leave them with the mine foreman?

A. Yes, sir.

Q. On these occasions would they all hand them to you or just some members of the crew?

A. Just some members.

Q. If only one handed it to you, you would hand it in the same way?

A. Yes, sir.

Q. How much time did it take you to hand that check in at the window or to hang it on the hook you have described?

A. I didn't understand you.

Q. How much time did that take?

A. How much time did it take?

Q. Yes, how much time did it take you?

A. It would only take a few seconds from the time the man handed it to me for me to deposit it.

Q. And then if all your crew was there and their checks had been deposited, you would go on down in the mine?

A. Yes, sir.

Q. Take the next skip, whichever one that was?

A. Yes, sir.

Q. What time did the first skip leave during this period of time, do you know?

A. I didn't understand you.

Q. What time did the first skip leave the portal or the entrance of the mine?

A. Well, they operated from—

Q. Leave about—well, go ahead.

A. From five minutes after six until six o'clock.

Q. I will ask you if the average of the time of the leaving of the first skip wasn't about eight minutes after six, just on an average?

A. Well, I never did have the time.

Q. But you say it was from six o'clock to five minutes after six, in your best judgment?

A. Yes, sir.

Q. About what time did the last skip leave, about what time?

A. Leave the portal?

Q. Yes.

A. Well, it will vary from 6:30 to 6:35.

Q. That is right. Now, you told Mr. Harris on yesterday that you went down on whatever skip you picked to go down on, that is right, isn't it?

A. Yes, sir.

Q. Now, then, when you went down would the mine foreman or the assistant mine foreman be at the tally house, first one and another of them stayed there, or which one was it regularly or most of the time?

A. Most of the time they both were at the tally house.

Q. Both of them stayed at the tally house?

A. Yes, sir.

Q. And when you left, the skip you caught, would you still leave the mine foreman and the assistant mine foreman at the tally house?

A. The majority of the time.

Q. The majority of the time. Then neither one of them rode down with you, as a usual thing, on the skip?

A. No, sir.

Q. Now, then, did you select the men that you would ride with on the skip, or did you just get in the skip that was available at the time you were ready to go?

A. Got in the skip that was available for me at the time for me to go.

Q. Then you didn't know whether your men had gone down in front of you or came down after you or on the

same skip; that was a matter that you didn't pay attention to?

A. No, sir, I didn't know that.

Q. Sometimes none of your crew might be on the same skip with you at all?

A. That is right.

Q. That is right, and the people riding on your skip might be members of other crews or service crews or just anybody that happened to catch that particular skip, isn't that right?

A. That is right.

Q. Did your crew work pretty regularly, Mr. Patterson, the one you had since you have been back at work as head miner?

A. All of them but one man. I have got one man that don't work regular.

Q. All right, now, then, when that man didn't show up how would you get a man to take his place?

A. Well, I usually wait around until the men are all checked in.

Q. That is until everybody has deposited their checks, you mean?

A. That is right.

Q. All right.

A. And then I would—the mine foreman would look over the board and I would tell him I was short a man and ask him did he have a man that he could give me and he would usually pick that man off of a service crew or maybe a heading that was down for some purpose; he would give me a man out of that crew.

Q. How would he get that man to your crew? Would he 'phone down or send down, or how would he get him to your crew? Who would he issue the instructions sometime to?

A. Sometimes he would tell me, he would say, "You go over in 1st right, wherever the track men are working,

or send one of your men over there," to tell this man to come over to my place.

Q. Would you go up yourself sometimes when he told you to do it?

A. Whichever way it came convenient.

Q. The most convenient to you?

A. Convenient.

Q. And you wouldn't do that, of course, until you went down into the mine?

A. Unless I would see some of the men on the outside there, I would tell him.

Q. When you would see one of these men you would tell him to get out at a certain place and pick up a man?

A. Yes, sir.

Q. But when you didn't see a man around there you would do it yourself?

A. I would do it myself when I would go down.

Q. When you got down. I believe you said yesterday that the skip was started by—what is the name of the man that runs the skip and gives the signal?

A. The skip tender.

Q. The skip tender, yes. Now, you told us on yesterday about one occasion when some assistant mine foremen told you to get off of a skip that you had gotten on because it was too crowded. Do you remember that incident?

A. The mine foreman—I got out of the skip. He didn't tell me to get out. I got out and he told me if I didn't want to ride it to get my number.

Q. You got out because it was too crowded?

A. Yes, sir.

Q. And you wanted to catch another skip that didn't have so many in it?

A. I didn't want to ride as scrouged as I was in that one.

Q. So you got out?

A. Yes, sir.

Q. And the mine foreman told you—did he tell you after you got out or before you got out?

A. After I got out.

Q. If you didn't want to ride to get your brass?

A. If I didn't want to ride it to get my number.

Q. Did you go get it?

A. I told him if he didn't want me to have it to go get it.

Q. And you still have it?

A. Yes, sir.

Q. Have had it ever since?

A. Yes, sir.

The Court:

All right, let's go ahead.

Q. So that was all there was to that occasion?

A. Yes, sir.

Q. Who was the mine foreman, if you don't mind telling me?

A. Mr. Jim Carson.

Q. And when did that happen?

A. That happened approximately a year ago.

Q. Approximately a year ago?

A. Yes, sir.

Q. Now, this rule book which has been offered in evidence, being Defendants' Exhibit No. 1: Of course, as head miner you are familiar with the rule book. You have had a copy of it. Now, are you familiar with the rule over on page 52 in reference to the main slope, skips and cages, particularly this one here, "When hoisting or lowering man trips, skip must be free of tools and material." You are familiar with that rule and have been, of course; you tried to observe the rules, didn't you?

A. Sir?

Q. You tried to observe the rules as well as you could, didn't you?

A. I tried to obey my foreman.

Q. And tried to obey the rules too, didn't you?

A. Well, in cases where the foreman would tell me to do things I didn't obey the rules; I obeyed him.

Q. In cases where the foreman would tell you to do things you didn't obey the rules; you obeyed him?

A. Yes, sir.

Q. You told us of one instance yesterday where you said the foreman told you to take some steel down, or hangers, was it?

A. He told us we could get the hangers out there.

Q. When was that, this one instance?

A. I couldn't recall the date.

Q. About when? I don't want the exact date.

A. It was approximately a year ago.

Q. Approximately a year ago. Now, as I understand it, those were hangers that had been brought out of the mine and repaired or sharpened or something of that sort?

A. They had been straightened.

Q. They had been straightened and you say they were lying up there?

A. Yes, on the surface.

Q. And what was it he told you?

A. Told him—

Q. Told you?

A. Well, I told him I needed some hangers and he said, "There is not any inside. Here is some that are straightened here." He said, "You can get some of those and take them down."

Q. How many did you get?

A. I got two or three. I don't know just how many.

Q. Did you carry them down?

A. I gave some of them to my men.

Q. Did you carry any of them down?

A. I carried one.

Q. You carried one?

A. Yes, sir.

Q. And gave how many to the others?

A. One or two to the other men.

Q. And they carried them down on a skip at that time?

A. Yes, sir.

Q. Now, those were the hangers, as I understand it, that the loading part of the crew used in your working place?

A. Yes, sir.

Q. And I believe you said that on this occasion the foreman told you that there were none down at the tool house?

A. Yes, sir.

Q. That is where they usually stayed?

A. Yes, sir.

Q. Where they stayed as a usual proposition?

A. Yes, sir.

Q. Had you asked for those hangers as you came off of work the night before, or not?

A. No, sir.

Q. Or had you just asked for them that morning?

A. Asked for them that morning, that shift.

Q. Well, you did sometimes ask for them when you found out you needed hangers or steel, right then at the end of a shift you asked the foreman to send some down to the tool house, or were they usually kept at the tool house?

A. They usually kept hangers and wedges and pipe fittings and material such as that.

Q. That is what I am asking about, that material that was usually at the tool house.

A. Yes, sir.

Q. On this occasion did the mine foreman tell you that there was none down there?

A. That is right.

Q. And there was some that had been straightened and to take those?

A. Yes, sir.

Q. And you took them?

A. Yes, sir.

Q. Now, after you got off at the underground man station you walked to your working place?

A. Yes, sir.

Q. If you were working in a stope you call it a stope and if it is narrow work which is in the heading, the narrow work; what do you call it?

A. Well, in driving a stope work you have got one development place, you see, what we call a face stope.

Q. That is when you first open it?

A. We carry it further in robbing the stopes out as we drive the place for it.

Q. Well, whether it is a stope of that kind or whether it is a stope that has already been opened, or whether you are working on the inside of it, or whether it is narrow work, you walk from your underground station to that place?

A. That is right.

Q. And, of course, the distance of your walk and the time it takes you depends upon how far the working place is from the underground station?

A. That is right.

Q. Now, when you get up there to your working place you are in charge of the crew?

A. Yes, sir.

Q. And you are the boss of the other six men that are in there?

A. Yes, sir.

Q. The first thing you have to do is to see that your working place is safe; that is the first thing?

A. Yes, sir.

Q. And, as you explained on yesterday, you and I guess your drill helper helps you on that?

A. The drill runner.

Q. I mean the drill man. You are primarily responsible and he is next responsible for seeing that the place is safe?

A. Yes, sir.

Q. And that is the first thing that you do when you get to work, when you get to that working place?

A. Yes, sir, when we get to our working place.

Q. And that is the first thing you do outside of the time that you have testified about carrying things, that is the first work that is done by you and your crew?

Mr. Harris:

We object to that, calls for a conclusion. He can state what he has done.

The Court:

Yes, let him state what he has done.

Q. Well, you have told us everything that is done up until this time. If there is anything else—

The Court:

If there is anything else you have done.

Q. If there is anything else done, tell it.

A. Well, usually when we go into the working place, we have got a fan; we start that, and then whatever tools that we carry from the nuck or from this place, why we get them loaded and carry them up on trams and then the drill men, they go with me to the working place or working face and start quarrying and making that place safe to go to work. These other men carry other material that we get from the nuck. It varies in different ways.

Q. These other men are not allowed to go up to where the working place is until after you and the drill men have found it is safe?

A. On occasions they go along with us to help us make it safe.

Q. Well, if they are not helping you make it safe they are not allowed. That is your primary duty, first?

A. Yes, sir.

Q. This rule—I will ask you if you didn't follow the rule in this respect, Rule 2 on page 37 of the exhibit says, "The head miner has direct supervision over all drillmen and section helpers employed in his section." That is you?

A. Yes, sir.

Q. And you do have direct supervision of your crew, of course?

A. Yes, sir.

Q. The next one is, "The head miner will be held personally responsible for the safety of any other workmen who are employed in his section for any special purpose." The next one, "The head miner must, upon entering the working place of his section, personally examine and test with a hammer and bar, roof, ribs and face of the working place." That is your first responsibility?

A. Yes, sir.

Q. And in doing that you are helped first by drillmen and if you call in any others they help you?

A. Yes, sir.

Q. And the work does not start at the face, I mean the work of producing ore or setting up mechanical drilling, that does not start until after you have made the place safe?

A. That is right.

Q. Now, in leaving the underground man station and going up to your stope or place you are working in, do you have any special people to go with? Does the mine foreman ever go with you up there ordinarily or usually, or the assistant mine foreman or anybody of that kind?

A. No, sir, we usually go just whenever we get off of the man trip.

Q. It is the same way with the crew?

A. Yes, sir.

Q. You go right on to your working place when you get off and your crew, when they get off they go to the working place?

A. Unless otherwise changed by the mine foreman.

Q. That is your usual practice?

A. Yes, sir.

Q. So you don't all get up to the working place at the same time necessarily. That depends upon what car you went down on and how the men went up there?

A. That is right.

Q. You don't accompany your men as a usual rule to your working place; you may walk up with one that happens to be on the same car, but that would be a matter of accident and not of design, is that right?

A. That is right.

Q. Do you get there generally at your working place behind or ahead of your crew, as a usual proposition?

A. I usually get there behind the crew.

Q. And if that is true they are waiting for you up there but they can't go in until you get there, can they?

A. Well, they usually go in—if they get there ahead of me they go in and get their steel and trolley poles and such as that.

Q. They commence getting ready?

Mr. Harris:

Let him finish. Don't interrupt.

A. I give that instruction to my crew not to go in the working place but to get the material that they need to remove the mechanical loaders or lay the trolleys on the chute and get them ready for the place they are going to work in, and such as that.

Q. In other words, your instructions to your crew and what you usually do if they go there ahead of you is not to go up to the face where you have to go to make the place safe, but to do the preparatory work about trolleys and such as that in getting in readiness for work; they can do that?

A. Yes, sir.

Q. What time in the morning would you say you usually get up to your working place, up to the stope you are working in, is what I mean?

A. At what time?

Q. At the beginning of the shift.

A. At the present time?

Q. No, all the questions I am asking are just like Colonel Harris asked, that is, before May 1, 1941.

A. Well, usually before May 1st I got into my working place around a quarter till seven.

Q. At 6:45?

A. From 6:30 to a quarter till seven.

Q. What time was the juice turned on at that time?

A. Before May 1st it was turned on at a quarter till seven.

Q. Now, your crew was divided into two sections, you might say, the drilling part of the crew and the loading part of the crew?

A. Yes, sir.

Q. But you, of course, were boss over both sections?

A. Yes, sir.

Q. Now, the loading part of the crew, their work consisted of handling the drag, skidder blocks and drilling the holes for the hangers and putting set blocks in them and the jackhammer and the wedges?

A. That is right.

Q. And scraping the ore up to the ramp and into the car?

A. Yes, sir.

Q. And then did their duties require them after the car was filled to roll it down to the sidetrack?

A. Yes, sir.

Q. Where the service crew picked it up to haul it up to the rotary dump, is that the way you do it?

A. Yes, sir.

Q. The place the service crew carries it—what do you call the nuck, where is the nuck?

A. It is the place where the traveling motor picks up our loads.

Q. Your crew—it is your duty—your loading part of the crew carries the loaded cars down to the nuck?

A. Yes, sir.

Q. Where the service crew picks it up and I guess picks the empties back up?

A. Yes, sir.

Q. Now, the drilling part of the crew, they are the ones that use the tripod drill and the heavy drill steel and, of course, connected with that is the air hose and the water hose, I suppose, and ~~then~~ after they drill the holes they charge the holes?

A. Yes, sir.

Q. With the dynamite and the fuse and cap, and then they set it off when the time comes?

A. Yes, sir.

Q. What time was the shooting prior to May 1, 1941?

A. 3:15.

Q. 3:15?

A. We started lighting up holes at ten minutes after three.

Q. 3:10 was the regular prescribed shooting time?

A. Yes, sir.

Q. And you couldn't shoot at other times in this mine?

A. No, sir.

Q. Now, the loading crew necessarily left, or did they leave during this period of time the working place, the stope or wherever you were working, before this shot was fired?

A. Yes, sir, the whole crew left before they were fired.

Q. Well, what I am trying to get at, who left first? Can you tell me that? Was there any part of the crew that left ahead of the other when your work on the loading crew finished up there with reference to the time the shot was fired?

A. When the lights went out.

Q. And that was what time?

A. At 3:10.

Q. Well, didn't they very often finish before the lights went out?

A. Very often?

Q. Yes.

A. Not often.

Q. Well, about how often?

A. Well, they might finish one day out of a week or something like that.

Q. All right, we will say one day out of a week that they finish some time around a quarter to three, or 2:30 or 3:00 o'clock, that one day?

A. Well, sometimes they would finish at 2:30.

Q. That is what I say, anywhere from 2:30 until 3:00.

A. Yes, sir.

Q. That is your crew. Of course, you don't know about the other crews, when they finished?

A. No, sir.

Q. All right, whether they finished at 2:30 or a quarter to three they had to be away by 3:10?

A. Yes, sir, that is when the lighting started.

Q. And whatever time the loaders got through the crew didn't have to stay back to do the shooting; you and your drill men did the shooting?

A. Yes, sir.

Q. And while you were doing that shooting they went out to the hoodlum?

A. While we were lighting.

Q. And on occasions before?

A. No, sir, they wouldn't leave the heading until five minutes after three at no time, because the mine foreman gave orders that every man stay in the heading.

Q. So then, if they finished work at 2:30 they would stay until five minutes after three and then leave?

A. Yes, sir.

Q. And you and your drill men would stay until 3:10?

A. Yes, sir.

Q. And then fire the fuse and then you all would go?

A. That is right.

Q. In going down to the loading station and going out after the end of the shift you were the last man out of your working place?

A. I was with the drill man.

Q. Either you or the drill man?

A. Yes, sir.

Q. Would you sometimes, you or the drill man go to handle the shooting alone?

A. On some occasions, by permission of the mine foreman.

Q. Or did you do it yourself?

A. Yes, sir.

Q. I am not trying to charge you with any dereliction of duty. Sometimes you went before but usually you stayed and did it yourself?

A. Yes, sir.

Q. Now, when these men went down to the unloading station, the hoodlum, as some of them call it, they had places there where seats were provided where the men sat; the first ones that got there where they could get on the skip the first ones that went?

A. Yes, sir.

Q. Would you say when the first skip ran there were usually assembled down there at that hoodlum more than could ride on the skip, or not? In other words, did some have to stay there and wait until the next skip, or did they gather as the skip ran?

A. Usually some had to wait.

Q. Usually some had to wait for their turn?

A. That is right.

Q. Like you happened to be in a doctor's office or a lunch counter, you would have to wait to where you could get a place?

A. Yes, sir.

Q. And when the skip would come the first ones would take that skip until it was loaded?

A. Yes, sir.

Q. And you usually had an assistant mine foreman to stay there and watch the performance.

A. Yes, sir.

Q. But he would watch it to the extent of seeing that it was not overloaded or that no misconduct happened, that is what he did?

A. He counted the men out.

Q. He counted the men out to go on the skip?

A. Yes, sir.

Q. About how many would he count out to go on a skip, usually, going out?

A. Around thirty.

Q. Around thirty?

A. Thirty or thirty-three. I won't be positive.

Q. And then those that were counted into the skip and made a skip load, why I suppose the ones that didn't catch the load would move up on the seats to catch the next one?

A. Yes, sir.

Q. And they would catch the next one and in turn, so on, until everybody was out of the mine?

A. Yes, sir.

Q. This first skip, before May 1st, Mr. Patterson, about what time would it leave to go out?

A. It would leave around 3:10 or 3:15.

Q. Around 3:10 or 3:15?

A. Yes, sir.

Q. And the last one would leave about what time?

A. It would vary between 3:30 and 3:45.

Q. Well, of course, the skips wouldn't leave until they had a load?

A. No, sir.

Q. They wouldn't leave until they had the thirty, if that was the load. So the first one would leave about 3:10 and the last one about 3:45, and at intervals apart how long do you think that would be between the skips; would they leave five or ten or fifteen minutes apart?

A. I would imagine between eight and ten minutes.

Q. Would it be the same skip that would go up and come back?

A. Yes, sir.

Q. That is what would determine it. All right, sir. Now, when you got out—well, first this: Would you ride out with any prescribed or designated person, or would you just ride out with the crowd that happened to catch the skip you caught?

A. I would ride out when my turn came.

Q. You would ride out when your turn came. So you might ride out with some of your crew or you might not ride out with any of your crew?

A. That is right.

Q. So if you happened to be the last one that left your working place your crew would be gone, if they preceded you and had gotten first place?

A. Some of them would.

Q. All of the loading crew would?

A. Yes, sir.

Q. They would generally be out before you got down there?

A. Yes, sir.

Q. Now, in riding out, just as coming in, did the mine foreman or assistant mine foreman ride down with you as a usual proposition, or just the men that had been working?

A. The men that had been working.

Q. The same skip tender that would take it out brought it in, the skip tender who had charge of the movements?

A. Yes, sir.

Q. When you got out you deposited your check, I mean you picked up your check?

A. Yes, sir.

Q. Stopped at the tally house and got your check?

A. Yes, sir.

Q. And went on to the bath house and took your bath and went on home?

A. That is right.

Q. Now, I want to ask you a few questions about this incentive plan. You told Mr. Harris this morning that the strike was—that you strick before you tried the incentive plan, as I understand it?

A. Yes, sir.

Q. Your union; after the plan had been explained to them and you discussed it you decided you didn't want to work under the incentive plan; that is right, isn't it?

A. Yes, sir.

Q. And refused to work under it?

A. Yes, sir.

Q. And struck, and the mine closed down, didn't it?

A. That is right.

Q. Now, you were asked about the membership of the union, as to how strong it was. It was sufficiently strong then to shut the mines down?

Mr. Harris:

We object to that, if the Court pleases, argumentative, calls for a conclusion.

The Court:

Sustained.

Q. Well, it did shut the mine down?

Mr. Harris:

We object to that. He can tell what happened but not what caused it to shut down.

Q. You voted to strike, didn't you?

A. Yes, sir.

Q. And struck?

A. Yes, sir.

Q. And the mine was completely shut down, wasn't it?

A. Yes, sir.

Q. And stayed shut down until what you referred to as the Governor's agreement was made?

A. Yes, sir.

Q. And then when that was made you returned to work except a number that you call undesirables who did not return to work?

A. Yes, sir.

Q. And the mine reopened?

A. Yes, sir.

Q. Under the incentive plan?

A. That is right.

Q. And they have been under the incentive plan ever since and are today?

A. That is right.

Q. Now, under that incentive plan you get a guaranteed wage, don't you, Mr. Patterson?

A. Yes, sir.

Q. No matter how much ore you produce you are paid so much. Prior to May 1, 1941, you were paid so much an hour for eight hours, weren't you?

A. That is right. We were paid for eight hours.

Q. And how much guaranteed wage before May 1st?

A. $6.16.

Q. That was the company's occupational rate for the head miner, the guaranteed wage for the head miner?

A. That is right.

Q. Do you recall the guaranteed wage of your drill men? I believe he is next?

A. $5.60.

Q. $5.60. Now, do you recall what the next man was, the guaranteed wage?

A. $4.92.

Q. And was that the last one?

A. The last one.

Q. What did the $4.92 guaranteed wage, what members of your crew did that cover?

A. It covered the drill helpers, the section helpers at that time.

Q. Covered everybody except the head miner and the driller?

A. And the drag operator.

Q. What was the drag operator?

A. $5.60.

Q. He got the same as the driller?

A. Yes, sir.

Q. Now, without reference to the incentive plan that you worked under, without reference to that, that is what you got for eight hours work, that is right, isn't it?

A. Yes, sir.

Q. Now, relative to that, after you produced a certain amount you got an incentive or bonus above these rates?

A. Yes, sir.

Q. If your crew produced more than that amount. Just for illustration here, you were asked about exhibits that were shown you, these statements. I want to show you at this time one of your own, just to illustrate this incentive plan. This is the kind of statement that you got?

A. Yes, sir.

Q. Now, you got that at what office?

A. At the Ishkooda office.

Q. You got that at the Ishkooda office from whom?

A. The statement?

Q. Yes, the statement just like this.

A. They have a boy there in the statement house, we call it, that issues the statements to us.

Q. It is a clerk?

A. Yes, sir.

Q. They gave you the statements. You would go there on payday; is that when you got it?

A. Yes, sir.

Q. You got there on payday and ask for your statement and he gives you this whole thing?

A. Yes, sir.

Q. Then you would go up to the pay window and tear off this part up here that you sign?

Q. That would be right here where it says, "second"—"duplicate," you say?

A. Yes, sir.

Q. You sign that and leave this with them?

A. Yes, sir.

Q. And then you would retain this part?

A. That is right.

Q. Now, then, this one here says, "For second half of October, 1938." It shows that half of the month that you had a total units of 88 hours at the rate of 77 and your guaranteed earnings were $67.76 and your incentive earnings to you individually were $4.23, making a total of $71.99, whatever the total was, and then they deduct from that what your deductions had been during the month?

A. That is right.

Q. And your balance would be the amount you had earned, guaranteed wage plus incentives, less the deductions which cover the unemployment insurance, federal old age benefit tax, medical, electricity and water, rental. You had a company house?

A. No, sir.

Q. At this time, didn't you, in October?

A. No, sir, I haven't lived in a company house since 1934.

Q. Do you know what that was for?

A. Well, that was for rent I had in 1931.

Q. That was back payment?

A. Yes, sir.

Q. Rent that you owed but you had to pay back payments upon?

A. Yes, sir.

Q. $4.50?

A. Yes, sir.

Q. And your store account was $5.00?

A. Yes, sir.

Q. That is just an illustration. And your cash that you got was $59.05?

A. Yes, sir.

Q. You were working at this time five days a week, I believe?

A. Yes, sir.

Q. Working eight hours a day and paid eight hours a day?

A. Yes, sir.

Q. And none of that time included any time you spent in traveling?

A. I didn't understand.

Q. It did not include—you were not paid for the time you spent in traveling?

A. No, sir.

Q. In other words, what you were paid for was from 6:45 in the morning at the working place until 3:15 in the afternoon with thirty minutes out for lunch?

A. That is right.

The Court:

Let's take a recess.

(A brief recess was then taken.)

Mr. Burr:

Will you please, sir, get this statement I asked to be identified?

The Clerk:
Do you want it as the plaintiffs' or T. C. I.?

Mr. Burr:
Let it be T. C. I.

The Clerk:
It will be T. C. I. No. 28.

(Thereupon, the statement of earnings of the witness E. T. Patterson for the second half of October, 1938, showing incentive plan benefit and deductions, was identified as T. C. I. Exhibit No. 28.)

Q. Mr. Patterson, I showed you and asked you a few questions before the recess about this statement here which is T. C. I. Exhibit 28, which was for the second half of October, 1938. Now, I want to ask you so as to get another period. Here is one for February, 1941, in which it shows you worked 40 units and your rate was 77 cents an hour.

A. Yes, sir.

Q. And the eight hours at that rate makes $30.80.

A. Yes, sir.

Q. And then on this particular pay period you made an incentive of $31.92.

A. Yes, sir.

Q. That covers, of course—they always gave you an incentive benefit every two weeks?

A. Yes, sir.

Q. Even when they were paying you for one week?

A. Yes, sir.

Q. This is not for two weeks but one week?

A. That is for me. That is not for the crew.

Q. The crew got the same proportion that they were entitled to?

A. No, sir.

Q. Well, they got their incentive benefit, whatever it was?

A. Whatever the incentive called for.

Q. At the same time you got an incentive payment they got the same payment under that plan?

A. At the time I got that $31.92 my mucker got a dollar.

Q. Well, you didn't know that?

A. No, sir.

Q. But that would be part of the time?

A. Yes, sir.

Q. But they got whatever the incentive earning plan called for?

A. Yes, sir.

Q. And you got the incentive earning according to the plan?

A. Yes, sir.

Q. And you got on this particular statement $31.92?

A. Yes, sir.

Q. You got a total earning of $62.72, the incentive being $31.92 and one week of wages, $30.80?

A. Yes, sir.

Mr. Burr:

We offer this and ask that it be identified, this statement.

The Clerk:

T. C. I. No. 29.

(Thereupon, the statement of earnings of the witness E. T. Patterson for one week of the month of February, 1941, showing incentive plan earnings and deductions, was identified as T. C. I. Exhibit No. 29.)

Q. Now, you have been getting those statements and signing those statements ever since you have been working for them, haven't you?

A. Yes, sir.

Q. They have been made out the same way?

A. Yes, sir.

Q. Substantially the same way, haven't they?

A. Yes, sir.

Q. And that started back when you first went to work. For a while you got them twice a month and for the last three or four years you got them four times a month?

A. Yes, sir.

Q. Ever since you have been working the last time, that is, ever since the incentive plan has been in effect, you have been getting the statement four times a month?

A. Yes, sir.

Q. Showing that you have been paid your guaranteed rate of eight hours—

Mr. Harris:

The statement shows, speaks for itself.

The Court:

He has been over it twice.

Mr. Burr:

I don't think, if Your Honor please, I have ever asked that question before.

The Court:

You have asked him that question twice.

Mr. Burr:

I am asking him about how long this procedure has been in effect.

Mr. Harris:

The question I am objecting to, the statement showing so and so. The statement is in evidence and speaks for itself.

Q. You know, of course, that you were not paid for traveling time, Mr. Patterson?

A. Yes, sir.

Q. You knew that all the time?

A. Yes, sir.

Q. You don't have to have a company auditor to tell you that; you knew.

Mr. Harris:

We object to arguing with him.

The Court:

He said he hadn't been paid it.

Q. And you haven't been paid since you have been working there traveling time?

A. No, sir.

The Court:

Let's get along. We are taking up too much time.

Mr. Burr:

If Your Honor please, I am getting along just as fast as I can. I realize, of course, it is going to be long on the first witness.

The Court:

Have you got any other question to ask this witness?

Mr. Burr:

Yes, sir, I have got several.

The Court:
Well, proceed.

Mr. Burr:
Well, I just don't want Your Honor to think we are unnecessarily taking up time.

The Court:
I think you are.

Mr. Burr:
All right, sir, I want to state my side of the proposition, that I am not. This is the first witness that has been put on the stand by the defendants. As I recall, Mr. Ball was examined and cross examined.

The Court:
That is all right, I will allow you liberal cross examination and expect to, but I don't want you to be repeating something over and over, Mr. Burr.

Mr. Burr:
I disagree with Your Honor's thought about that. I am certainly not doing it in a way that is unnecessary.

The Court:
Well, do you want the last word?

Mr. Burr:
No, sir. Your Honor always has the last word with me.

The Court:
All right, sir, I say let's go ahead.

Mr. Burr:
All right, sir.

Q. Working under this incentive plan and since you have been working under that plan, you and your crew, have you endeavored to produce as much ore as you could within reasonable physical limitations?

Mr. Harris:
We object to that, if the Court pleases, calls for a conclusion.

The Court:
Overruled.

A. Yes, sir.
Q. And it has been to your financial interest to produce as much as you could under the incentive plan, hasn't it?

Mr. Harris:
We object to that.

The Court:
I think that is a conclusion.

Mr. Burr:
Well, if he knows it, it is not a conclusion.

The Court:
If he knows it, let him answer it.

A. Well, as far as the job is concerned, it is to my financial—
Q. I am talking about you.

Mr. Harris:
Let him finish.

A. I was told whenever the incentive plan went into effect—

Q. I never asked you that, Mr. Patterson. I just asked you a simple question, when you went under the incentive plan, it was to your personal interest to produce as much ore as you can.

A. Yes, sir.

Q. Now, I want you to tell me, please, sir, just where this place is that you said you had to stoop on the walkway from the underground loading station to the place where you worked, where you described some wires that were over your head.

A. Between 64 and 66.

Q. Betwen 64 and 66?

A. Yes, sir.

Q. Is that 64th stope or 64th entry?

A. 64th heading.

Q. 64th heading. That is not on the main slope, that is on one of the heading slopes?

A. On the manway.

Q. On the manway. I wanted to see—to get exactly where it was. I don't understand it myself, the manway that you are talking about. Is that where the haulage or hauling of ore is, or where you walk?

A. That is where the men walk.

Q. Where the men walk.

A. And where they carry pipe lines and those signal wires and 'phone wires and high tension wires.

Q. About how long is that place that is between 64 and 66, that you are talking about?

A. I couldn't hardly say. It varies. Sometimes you could walk fifty feet and could straighten up and then right back down again, or you might; I couldn't.

Q. About how far is the whole distance between 64 and 66? You can tell me that, can't you?

A. I think those headings are about sixty feet apart.

Q. Is the place that you are talking about lighted electrically, or not?

A. Yes, sir, it is electrically lit up.

Q. Is the place that you are talking about a place where there is an overcross above, is that what it is?

A. I didn't understand you.

Q. At 66 is there an overhead bridge?

A. Yes, sir.

Q. Is that where the wires run up above where you walk?

A. Yes, sir, the wires go above the bridge.

Q. The wires go above the bridge?

A. Yes, sir, the wires between 64 and 65, is where the wires are right down close to where you walk and all down the manway is where the pipes are.

Q. These pipe lines are on the side, are they not?

A. They are on the side in some places and run right down where men have to cross back and forth.

Q. Now, referring again to this rule book that has been identified in evidence, Rule 10: If any of your crew is injured, no matter how small the injury is, it is your duty to report that?

A. If I know about it.

Q. Of course, if you didn't know about it you couldn't report it. And if you are injured yourself, it is your duty to report it?

A. Yes, sir.

Q. I want to ask you if you have ever been injured and reported that injury, walking along the places you told us about?

A. No, sir.

Q. Since you have been working there?

A. No, sir.

Q. How many years have you been walking there?

A. Thirteen years; about thirteen years.

Q. During that period of time have you learned or reported that one of your men received any injury walking along that place?

A. No, sir.

Q. So, so far as your knowing it of your own knowledge or being put to you by your men, during the thirteen years that that place has been used, nobody has ever been hurt?

A. I couldn't say that, because there has men slipped.

Q. I said hurt. I didn't say anything about slipping.

A. If a man falls down he is hurt, and there was one man. I don't recall who he was.

Q. Now, is this something you know about? That is what I am asking you about, Mr. Patterson; not what somebody told you.

A. This is something I know about.

Q. All right, what is that, now? Let's see when it was.

A. The man slipped down and kind of rubbed the hide up on his leg.

Q. When was that, that he rubbed the hide up on his leg; when was that?

A. Probably two or three years ago.

Q. Who was it?

A. I couldn't recall that.

Q. Was that a member of your crew?

A. No, sir.

Q. Is that the only one you ever saw that got hurt?

A. As far as I can recollect.

Q. Did he quit work that day, or do you know?

A. No, sir, he didn't.

Q. Was his injury reported or not, or do you know?

A. I couldn't say that because he wasn't on my crew.

Q. But you or your crew, you know about them, you never had and reported an injury since you have been working there, on that walkway?

A. No, sir.

Q. That is true of the skip, you and your crews, so far as you know?

A. So far as I know.

Q. So far as you and your crew in thirteen years have never been hurt or received an injury that you reported from the time you left the entrance on the skip until it got to the working place, traveling there?

A. No, sir.

Q. Neither going or coming. Now, these cables along this place are all armored cables and insulated wire, aren't they?

A. Yes, sir.

Q. That you are talking about. And this bridge, this low place I asked about, is a bridge where the tram crosses the manway that you were talking about?

A. Yes, sir.

Q. That is the lowest place along there, isn't it?

A. Yes, that is the lowest place.

Q. That is the lowest place. And how wide is that bridge?

A. I couldn't say because I don't know just exactly.

Q. Just about how long do you have to stoop to get under that particular obstruction?

A. About ten feet.

Q. About ten feet. Would you mind showing us about how much you have to stoop to get under that particular obstruction? Just illustrate it to us.

A. Well, for me I have to stoop about that. (Witness stands erect and bends forward.)

Q. All right, sir, going along that ten feet. Now, you said something about there was some place in the mine that got slippery sometimes, part of the walkway. Now, where was that particular place?

A. That is between 64 and 66.

Q. That is the same place, then?

A. Yes, sir, and all along the pipe lines.

Q. That is where the pipe lines are?

A. Yes, sir.

Q. And that is the place that you referred to as being somewhat slippery?

A. Yes, sir.

Q. And that is the place where the one man that you remember seeing slip down and skin his leg along there somewhere?

A. I couldn't say that, because I think that that was above this place, back up around 62.

Q. I thought you said you saw that at this place.

A. It was between 62 and 63.

Q. Is where this man slipped and got hurt.

A. The same pipe line.

Q. How close were you to him when he slipped?

A. I was about eight or ten feet.

Q. About eight or ten feet, in front of him or behind him?

A. Behind him.

Q. You don't remember who he was?

A. No, sir, I couldn't say.

Q. Did he get up and go on?

A. Yes, sir, he got up. He seen that he wasn't injured bad.

Q. Did he take his pants down?

A. Yes, sir. It was a colored man. I don't recall who he was.

Q. Scratched his thigh, is that where it was?

A. Yes, sir, on his thigh, where he turned and slid.

Q. Now, you said something about there being no Chick Sayle houses or privies, as Colonel Harris called them, I believe, underground. Have you ever worked in a mine where they had toilets underground?

A. No, sir.

Q. That condition has been existing ever since you have been a miner?

A. Yes, sir.

Q. Did you ever do any farming?

A. Yes, sir.

Q. Did you ever work on a farm where they had them but in the field?

Mr. Harris:

We object to that.

The Court:

Sustain it.

Mr. Burr:

All right, sir, we except.

The Court:

No comparison.

Q. Do you have those places at the bath house?

A. Yes, sir.

Q. That is, toilets?

A. Yes, sir.

Q. You have them, of course, at your home?

Mr. Harris:

We object to what he has at his home.

Mr. Burr:

All right, if he objects I don't insist on it.

Q. As the result of that, you say the bad smell—is that what you are talking about, that there was a bad smell—did I understand you to say that that is what it is from?

A. Yes, sir.

Q. From men having calls of nature underground?

A. Yes, sir, in most instances.

Q. How long has that situation—have you noticed the bad smell down there?

A. Well, most particularly since we have got down in the lower vein below the fault and down in the bottom part of the mine.

Q. Well, it has been going on more or less all the time?

A. Yes, sir.

Q. Ever since you have been working there?

A. Yes, sir.

Q. Now, Mr. Patterson, you say you were President of the Local for a while, about two years, I believe you say?

A. Yes, sir.

Q. And at all other times since 1933 you have been either President or on the Executive Board, as you call it?

A. Yes, sir.

Q. Is that the Executive Board of the Local or the Executive Board of the District?

A. The Local.

Q. The Executive Board of the Local and your Local is what number?

A. 153.

Q. You have also served during a large part of this time as a member of the Grievance Committee, haven't you?

A. I didn't understand the question.

Q. You have also served as a member of the Grievance Committee, the committee that takes up with Mr. Cameron any grievance you have?

A. While I was President.

Q. While you were President?

A. Yes, sir.

Q. You served as a member of that committee?

A. Yes, sir.

Q. And you and your committee would meet with him regularly once a month, just about, didn't you?

A. Yes, sir.

Q. You met in his office there at Ishkooda?

A. Yes, sir.

Q. And you presented to him such complaints or grievances as you had?

A. Yes, sir.

Q. And he had a secretary or stenographer or somebody present to take minutes?

A. Yes, sir.

Q. And the minutes were written up and then a copy given to you and you signed a copy as to the correctness?

A. Yes, sir.

Q. And you didn't sign it without you thought they were correct; they were correct statements that you signed?

A. Yes, sir.

Q. Now, the same conditions that have existed about not having any Chick Sayle houses, and also the same conditions in this 64 and 66 heading that you are talking about and the same skips and the same character of skips and the same haulage ways and the same walkways have been used since May 1, 1941 that were used before May 1, 1941, haven't they?

A. Yes, sir.

Q. The only difference, so far as method is concerned, is the time of going in the mine and coming out?

A. I didn't understand.

Q. The only difference, so far as traveling is concerned, is the time of going in the mine and coming out?

A. That is right.

Q. You come out from underground now since May 1st an hour and a half shorter time than you used to; that is what it amounts to, isn't it?

A. Approximately, yes, sir.

Q. Approximately an hour and a half. Now, have you, since May 1, 1941, presented any complaint or grievances to Mr. Cameron, or has the union within your knowledge, presented any such complaints or grievances about these conditions of not having toilets or this walkway that you told us about yesterday and this morning, between 64 and 66, and the kind of skip that you three gentlemen illustrated yesterday that you run over as you go down?

A. No, sir.

Q. You haven't complained of any of these things since May 1, 1941, have you?

A. No, sir.

Q. And they have been just the same as they were before May 1, 1941?

A. Practically, yes, sir.

Mr. Burr:

Now, let me have those minutes.

Q. Did you keep the copies of these minutes that were given to you after the meetings?

A. The organization does.

Q. Have you got them all, or not?

A. I couldn't say whether it has, or not.

Q. Have you turned over all that you have to your attorneys?

A. To Mr. Sisemore, when I was President.

Q. I am showing you minutes that are signed by you. The one I first show you is one date January 11, 1939:

"Minutes of Meeting held in Superintendent C. B. Cameron's office January 11, 1939.

"Those present were: Mr. C. B. Cameron, Superintendent, Mr. J. I. Williams, Superintendent's Clerk, and the following committee representing the members of Ish-

kooda Local No. 153 of the International Union of Mine, Mill & Smelter Workers: Mr. E. T. Patterson, President, Mr. L. H. McBrayer, Committeeman.

"The meeting was called to order at 9:00 A. M., by Mr. C. B. Cameron, Superintendent.

"Mr. Cameron:
This is the regular monthly meeting and the meeting is now open. I would like to state that the meeting in the future will be held at 9:00 A. M., on the first idle shift in the second week of each month.

"Mr. Patterson:
That is all right with the committee.

"Mr. Cameron:
Do you have anything to bring up for discussion today?

"Mr. Patterson:
Yes, sir, the first thing is a complaint against George Holloway, Colored, bath house attendant, at No. 11 bath house. He comes into the white section of the bath house about 6:10 or 6:20 o'clock and starts sweeping before the men get away from the bath house. I have asked him three times to quit doing that as the dust is too bad for the men.

"Mr. Cameron:
You should have taken this up with the Foreman instead of telling Holloway. I have already taken that matter up and I supposed it had been corrected but if it has not been I will see that it will be."

Q. Did you make at any subsequent time complaint about that?

Mr. Harris:

I don't see the materiality of that, if the Court pleases.

Mr. Burr:

I expect, if Your Honor pleases, to show that these things that he is proving were never complained about, and I expect to offer the minutes.

The Court:

He has said on the stand that he didn't complain about that.

Mr. Burr:

I want to show the method of complaint that he did make.

Mr. Harris:

I don't think, if the Court pleases, to go into the details of all the little complaints at these monthly meetings and find out if that particular little complaint was corrected, and whether they handled it later, I don't think that has a thing in the world to do with this case. Now, when he started to offer the minutes I didn't object, but then he starts asking a lot of questions about what happened as a result of the meetings.

The Court:

I am going to let the minutes in.

Mr. Harris:

You let the minutes in?

The Court:

Yes.

Mr. Burr:

But I offer to prove and I expect to prove by this witness—

The Court:
I am talking about the minutes. I am admitting the minutes.

Mr. Burr:
But I want to submit my proof on the question I understood Your Honor sustained objection to. I understood this complaint Mr. Cameron stated was to be handled in the future. Now, my object is this—

The Court:
I will let the minutes in.

Q. Was there any more dust complaint after that about dust in sweeping in the bath house, or was that, so far as, you know handled?
A. There was no more complaint.
Q. Then the minutes go ahead.

"Mr. Patterson:
We want to bring up the case of Lon Randall, Colored. He has asked the Committee to see if he can not be allowed to go back in the mine to work. I had him to go to see the doctor and the doctor told him that his eye was as well as it would ever be and we think that he should be allowed to go back into the mine to work. There are other men in the mine with one eye.

"Mr. Cameron:
I don't agree with you. There are several men in the mine who only have one eye but they have been working in the mine for a long time. I don't think that we should allow Randall to go back into the mine at this time. Just because we have other men in the mine that only have one eye is no reason for putting anyone else in there. Randall has only been injured since March, 1938, about a year, and he is not accustomed to the loss of his eye yet.

"Mr. Patterson:
Since others are in the mine with only one eye Randall feels that he could work all right in the mine."

Mr. Burr:
Then it goes ahead with the other. There is no use to read all of those.

The Court:
Read it if you want to. It is all in but I have about agreed to make up my mind that I am going to let you loose.

Mr. Burr:
All right, sir.

"Mr. Cameron:
Randall has talked to me several times about his going back into the mine but I don't feel that it is good practice to allow him to go back now.

"Mr. Patterson:
Then you will not allow him to go back to work in the mine?

"Mr. Cameron:
No, not at this time.

"Mr. Patterson:
Well, I will take that report to him and if he wants us to take it up any further we will arrange to do so.

"Mr. Cameron:
All right."

Q. (Continuing.) Then I will ask you to look over that and see if these other complaints were made at this

same meeting, without going into details. The next one is about Willie McCray. The next one is about Freeman Wood. You remember that, don't you?

A. Yes, sir.

Q. About a skip tender job being open.

A. Yes, sir.

Q. I believe that is the last one. That is all the discussion about Freeman. It winds up:

"Mr. Cameron:

That is all right.

"Mr. Patterson:

That is all that we have today.

"Meeting adjourned at 10:40 A. M."

Then you signed for the Committee, Mr. Cameron and then Mr. Williams. Now, was that the usual custom of these meetings that the minutes were taken down and you signed the minutes?

A. Yes, sir.

Q. And you got a copy and the company got a copy?

A. Yes, sir.

Q. Now, just to identify your signature on the other meetings, this is your signature on the minutes of September 21, 1937; isn't it?

A. Yes, sir.

Q. It shows there a meeting.

A. Yes, sir.

Q. And on Friday, November 11th. The next one is February 8, 1939.

A. Yes, sir.

Q. The next one is March 8, 1939.

A. Yes, sir.

Q. March 8, 1939.

A. Yes, sir.

Q. The next one is March 23, 1939. Is that your signature there?

A. Yes, sir.

Q. The next one is April 12, 1939. The next is May 10, 1939, is that right?

A. That is right.

Q. And the next is June 13, 1939. That is Sisemore.

A. Yes, sir.

Q. Who was Mr. Sisemore?

A. He was President of the organization.

Q. Succeeded you as President?

A. Yes, sir.

Q. And the next seems to be McBrayer. That seems to be the ones you have signed.

Mr. Burr:

Now, we will offer the ones that he has identified, Your Honor, and subsequently the others, if the other witnesses testify.

The Clerk:

Do you want those marked as exhibits?

The Court:

What is the exhibit number?

The Clerk:

30.

Mr. Burr:

Make it 30. I will give these gentlemen an opportunity to check these. These are the only signed copies we have. We will withdraw these and substitute the others.

Mr. Harris:

Of course, we will want to check them and a lot of other minutes I have asked about.

Mr. Burr:

Yes, I will give you all the minutes in this book. These are the ones for Ishkooda. I am taking them up by divisions.

The Court:

All right.

(Thereupon the minutes entitled, "Tennessee Coal, Iron & Railroad Company, Ishkooda Division, Minutes of Meetings held in Superintendent C. B. Cameron's office, dated January 11, 1939, September 21, 1937, November 11, 193.., February 8, 1939, March 8, 1939, March 23, 1939, April 12, 1939, May 10, 1939, testified to by the witness, were identified as T. C. I. Exhibits Nos. 30-30G-, inclusive.)

Q. Now, then, I will ask you whether or not during all of the time that you served as president and as a member of this committee—I have shown you these minutes—I will ask you whether or not independent of the minutes you ever remember that you did at any time ever present or take up with Mr. Cameron any grievances about conditions on the skip or in the walkways; has there any such grievance ever been submitted during that entire period of time?

A. Not to Mr. Cameron.

Q. Not to Mr. Cameron. Well, he is the man that you went to with your grievances, isn't he?

A. Yes, sir.

Q. So far as you know, none ever was submitted to to Mr. Cameron?

A. No, sir.

Q. All right, sir. Now, then, have you ever served on any negotiating committee of the union in the negotiation or attempted negotiation of contracts, Mr. Patterson, since 1933, other than the one at Chicago that you mentioned?

A. Not that I know of.

Q. You don't recall ever being on any other negotiating committees?

A. No, sir.

Q. Now, you testified this morning to Mr. Harris about the meeting in Chicago that was attended by Mr. Vance and Mr. Moses, representing the company, and, so far as you could recall, by yourself and Mr. McDaniel. Was Mr. McDaniel the President of one of the other Locals on the mountain?

A. President of Wenonah.

Q. At Wenonah. Mr. Mitch, of course, was the Regional Director of the C. I. O., was he, and President of the United Mine Workers of America?

A. That is right.

Q. What office did Mr. Lemley hold with the union?

A. He was President of the Muscoda Local, I think, at that time.

Q. What office did Frank Allen hold?

A. He was representing the International.

Q. International Vice-President of the District, is that his title, or do you recall?

A. No, sir.

Q. International Representative?

A. Yes, sir.

Q. Where did he live?

A. Where did he live?

Q. Yes.

A. He lives at Brown Station.

Q. Did he work for any of these companies?

A. He did work for them.

Q. Now, do you know how long since he had worked for any of them?

A. No, sir, I do not.

Q. Now, Lee Pressman, I believe you said was the General Counsel or the Counsel for the Smelters Union, the International Union?

A. For the C. I. O.

Q. For the C. I. O. Was Mr. Reid Robinson, the President of the Union, engaged in those conferences?

A. Yes, sir.

Mr. Burr:

Now, I would like to have the T. C. I. exhibit; that is, the contract signed. They commence with 5, 6, 7, 8, 9, 10, 11, 12, 13 to 31. Just let me have that file and I can get it out.

Q. Do you remember the date that that contract was signed, that you negotiated at Chicago, Mr. Patterson? Do you remember what year it was in?

A. It was in 1938, I think. I don't know just the exact date.

Q. I will ask you, please, sir, to look at T. C. I. Exhibit No. 14, and see if that is the one that was negotiated in Chicago and signed by Reid Robinson, Van D. Jones, C. J. McDaniel, E. T. Patterson, J. M. Lemley and Frank Allen.

A. That was the one that we brought back to the Local.

Q. Presented to the Local. Was it actually signed in Chicago or signed here, or do you recall?

A. We discussed it in Chicago and it was drawn up in Chicago and brought back here.

Q. To be submitted to the Local?

A. To be submitted to the Locals and to be signed in the Brown-Marx Building.

Q. And you did submit it to the locals?

A. Yes, sir.

Q. And they approved it?

A. Yes, sir.

Q. And then on that approval you signed it?

A. That is right.

Q. Now, is that the only one that you took part in? I think it is, as I recall it.

A. Yes, sir, I think it is.

Q. I think that is the only one. Now, then, you say that this grew out of—it started, you say, that the company offered a settlement and a contract about the undesirables and a settlement of that case that was pending before the National Labor Relations Board at the time, do you, Mr. Patterson?

A. Yes, sir.

Q. In other words, it was approximately something over two hundred former employees who claimed they ought to have been re-employed when the mine opened after the strike, on account of the incentive plan?

A. Around one hundred and fifty or sixty.

Q. Do you remembr the exact number? Was it one hundred and fifty-eight? I am just trying to refresh my own recollection.

A. I think there was one hundred and fifty-three that got paid off.

Q. I know, but there was a good many more in the original complaint. Do you remember how many there were in the complaint in the case that was tried?

A. No, sir, I do not.

Q. And you say that the company offered you—the settlement was on the basis of a contract, a working contract being made and the men being paid so much money in a lump sum that you all divided as you saw fit, I believe?

A. That is right.

Q. And the one hundred and fifty-eight, if that was the number, if they could stand the physical examination, would be re-employed?

A. That is right.

Q. So there were three parts to the agreement; one part was paying the money, and another part was re-employing them and another part was negotiating a satisfactory contract, a work contract?

A. Well, they handed this to us and told us that was it.

Q. How is that?

A. They handed this contract to us after that, drawed up for the steel workers, and we promised we would discuss it with the men.

Q. You all discussed the terms of the contract for quite a while in Chicago, didn't you, Mr. Patterson, Mr. Robinson and Mr. Pressman and you and everybody else up there?

A. No, sir.

Q. That is all you did in Chicago, wasn't it?

A. No, sir, not on the contract. It was on the undesirables.

Q. I thought the undesirables was the way—that the understanding was reached in New York before it got to Chicago.

A. The agreement for the undesirables, we discussed that in Chicago, with the contract.

Q. Then do I understand that your recollection is that this contract was drawn and they told you to take it or leave it or the settlement would fall through, is that the idea I got?

A. It wasn't stated to me in that form.

Q. But it was the substance of it?

A. The substance of my—

Q. If I—

Mr. Harris:

Let him finish.

Mr. Burr:

Go ahead. I didn't mean to interrupt him.

A. In my way of looking at it, we could either take that and bring it back or present it to the men and leave it like it was and it would go on through.

Q. And if that wasn't done, the whole thing, the settlement wouldn't go through?

A. That was my understanding.

Q. So you agreed, as you say, to this contract of '38, and the Locals agreed to it, in order to get the settlement through?

A. We agreed—

Q. To get the one hundred thousand dollars, or whatever it was, and the men go back to work?

A. To save our organization.

Q. That is the reason that you agreed to this contract, was to get the men back and to get the one hundred thousand dollars and to save the organization?

A. Yes, sir.

Q. And this contract was the one that you agreed to and signed?

A. That is right.

Mr. Burr:

It shows that it was the one signed by you up there. Your Honor, I think that is about all I care to ask him just now. Just a minute now. Mr. All wants to ask him a few questions about his Woodward operation.

The Court:

Very well.

(By Mr. All):

Q. As I understand you, Mr. Patterson, you say you are thirty-five years old?

A. Yes, sir.

Q. You started to work—where have you lived since you were born?

A. In St. Clair County and Jefferson County.

Q. Where?

A. In St. Clair and Jefferson.

Q. Now, when you started to work the first company you started to work with was the Woodward Company?

A. Yes, sir.

Q. How old were you then?

A. Around seventeen, sixteen or seventeen years old. They had to sign a minor's release to get to work.

Q. What kind of work did you do?

A. The first work I did was track helper.

Q. You said you worked at Songo?

A. Yes, sir.

Q. To No. 2. When did you work at Songo?

A. In 1923.

Q. When did you begin work at Songo?

A. I don't know just the exact date.

Q. Well, how long did you work at Songo?

A. Approximately two years.

Q. About two years?

A. Or a little better.

Q. Then you went from there to No. 2?

A. Yes, sir.

Q. How long did you work at No. 2?

A. About three months.

Q. Do you remember what year that was in?

A. In 1926.

Q. When you left?

A. Yes, sir.

Q. That is when you went with the T. C. I.?

A. Yes, sir.

Q. You said something about being foreman over there at the Woodward Iron Company.

A. Yes, sir.

Q. What kind of foremen were you?

A. I was track foreman, timber foreman and tipple foreman.

Q. What year was that?

A. I can't recall. It was just all different times.

Q. How long were you a foreman?

A. I couldn't say that.

Q. How long were you track foreman, how long tipple foreman and how long timber foreman, to the best of your recollection?

A. Well, it was just a short time. I couldn't say. I was timber foreman longer than any of the rest of them.

Q. I know, but was it a week or a month or six months or a year or two? What I am driving at is your recollection as to the time.

A. Well, track foreman, was around two months or three.

Q. What year?

A. I couldn't say that. It was right after I was taken off—I went from track helping to track foreman.

Q. Songo or No. 2?

A. Songo.

Q. How long were you timber foreman and where?

A. At Songo, for a little better than a year.

Q. And then tipple foreman?

A. At Songo, for just a short period, I don't know, a month or two.

Mr. All:

I believe that is all.

Mr. Burr:

Your Honor, I had about three questions to conclude with.

(By Mr. Burr):

Q. Mr. Patterson, you have presented a claim and the claim that you have, that the company owes you something for the traveling time since October 24, 1938?

A. Yes, sir.

Q. That is your present position, isn't it?

A. Yes, sir.

Q. And you base that claim on the claim that that traveling time was a part of your work?

A. That is right.

Q. That you were not paid for?

A. Yes, sir.

Q. And that you worked during that period of time eight hours a day and paid eight hours a day and that you are entitled to receive time and a half overtime over and above that during that period of time, that is your claim, isn't it?

A. I didn't understand the question.

Q. Well, you figured it over time, if you don't understand it?

A. Yes, sir.

Q. That is what you are claiming, for overtime?

A. Yes, sir.

Q. Beyond the eight hours that you were paid for?

A. Yes, sir.

Q. Now, when did you first make that claim and give the company any notice of it?

A. We did that through our representatives.

Q. All right, when was that, that you did that through your representative? I want to know when you first presented that claim from your Local, within your knowledge?

A. I don't know exactly when that claim was put in, but it has been discussed—

Mr. Burr:
I didn't ask you that.

Mr. Harris:
Let him answer.

Mr. Burr:
No, sir, that is something I don't want him to answer. I asked when did he first present it to the company.

Q. Well, do you recall when the local passed a resolution in reference to it and authorizing a copy to be served on all of these companies, do you remember that, or not?

A. I don't remember the resolution. All I remember is talking.

Q. Do you remember attending a meeting in which Mr. Sisemore was present on October 5, 1940, in re Ishkooda Local No. 153 of International Union of Mine, Mill and Smelter workers, District No. 5, an affiliate of the Bessemer Smelters Council, just a conference is all? Is that the first time you ever presented it to the company or authorized it to be presented to the company?

A. So far as I remember.

Q. So far as you remember?

A. I remember that being read and the Local approving it.

The Court:
He said that.

Mr. Burr:
All right, sir.

The Court:
Do you want to go over it?

Mr. Burr:
Well, sir, I didn't want to have any doubt about it. I thought Your Honor said you would turn me loose a little bit.

The Court:
I did a while ago, provided you don't ask the same questions.

Mr. Burr:
I believe now that is all I care to ask him.

Re-Direct Examination.

(By Mr. Harris):
Q. Mr. Burr asked you about buying a pair of shoes at Simmons'. Was that pair of shoes that you bought at Simmons', those safety shoes, substantially the same kind and quality of shoes that you had been getting at the T. C. I.?
A. Yes, sir.
Q. And what did they charge you for them at the T. C. I.?
A. $2.95.
Q. What did they charge you for them at Simmons'?

Mr. Burr:
We object to that, if Your Honor please.

The Court:
Overruled.

A. $2.45.

The Court:
You went into it.

Mr. Burr:
All right, sir. Not the fact that he can get them somewhere else.

Q. All right. When you arrived at the heading or stop on your shift did you start making the place safe before the juice was turned on, or did you wait until the juice was turned on?

A. I didn't understand the question.

Q. When you got up to the place, you entered in your shift, whether day or night, and you came down the slope and walked in through the various manways, and you are getting up to the drilling place. Now, would you wait when you first arrived there until the juice was turned on to start making the room safe, or would you start making it safe as soon as you got there?

A. Usually I would walk up into the place and look over before the lights came on, if I entered the heading before time, to see how the place was looking and what steps we would have to take to start work.

Q. Now, during these three years where Mr. Burr asked you about eight hours, during the three years up until May 1, 1941, how did the company take the time, your time; did a man come to you on the surface or did he come to you down in the mines, or where did he come to get your time?

A. I usually made out my time inside and the tally man or the time taker would check it on the outside.

Q. When did you make out your time, when you started work, that is to say, when they started drilling, or during the lunch period, or did you wait until you had finished drilling; did you have any regular time?

A. Various times in the day. Sometimes it would be before dinner or after dinner.

Q. And was the time of the men in your crew taken at various times during the day also?

A. I didn't understand.

Q. How about the men in your crew, how was their time taken?

A. Well, I usually knew who I was working or what men I was working and when I got a convenient time to turn loose to go where I made out my time I would go and mark the right men's names and eight hours on the sheet.

Q. That is right. So every man that you had on your crew, if he was there you always just reported eight hours?

A. Yes, sir.

Q. Now, Mr. Burr asked you if the mine completely shut down in 1936. Now, I will ask you if company men, during the time that the strike of '36 was on, were those company men at work, doing work for the company?

A. They were.

Q. What work were company men doing?

A. They were cutting bushes on the mountain.

Q. All over the top of Red Mountain near Ishkooda?

A. Yes, sir.

Q. Had those bushes, so far as you could see, been connected in any way with the operations of the mine before 1936?

A. No, sir.

Mr. Burr:

Your Honor understands I have got objections to all of this.

Mr. Harris:

Yes.

Mr. Burr:

I thought I ought to call attention to it when it is getting so far out of the issues, and trying to save time.

Mr. Harris:

I am trying to save time too.

Mr. Burr:

I am objecting because I can't conceive how it has got anything to do with this case, working on the mountain during the strike, on top of the mountain.

The Court:

Overruled.

Mr. Burr:

Exception.

Q. For what distance were the bushes and trash cleared off of the mountain, from the top of the slope?

A. They were cleared off up to the mouth of the slope.

Q. And then how far out from the mouth of the slope?

A. All over the top of the mountain.

Q. Do you know whether any other company men were doing any work there besides cutting down the bushes?

A. No, sir, I don't.

Q. You don't know whether they were putting in towers or concrete work or electric work or wires or anything else?

A. No, sir, I don't.

Q. Of your own knowledge, you don't know. Now, Mr. Burr asked you about production under the incentive plan and about it being to your financial interest to produce more ore and you had got to this statement and were interrupted: "So far as my job was concerned, it was

to my interest." In what way was it to your interest, so far as your job was concerned, to produce?

A. Well, when the incentive plan was first put into effect we were called into the office and told that it was going into effect and that we would get so much over our—over—for running over twenty cars—twenty-four cars. At that time we had five-ton cars. And we were told that we must get over that and if we didn't that our place would be investigated by the mine foreman and assistant and other officials, and if we couldn't produce why there would be another man to take our place.

Q. As mine foreman?

A. As head miner.

Q. At these meetings with the company officials did the union ever have their own stenographer there?

A. No, sir, not to my knowledge.

Q. Did you all ever ask to have your stenographer there?

A. Not as I recall.

Q. Now, when Mr. Burr was talking to you about making a complaint as to the condition of the walkway, the manway, you made the statement that you hadn't made any complaint to Mr. Cameron. Were complaints made to any other officer or representative of the company besides Mr. Cameron about the condition of the walkways that he was asking you about?

A. In reference to the skip there had.

Q. What complaints were made, and to whom?

A. Mr. Carson, our mine foreman. Very often, from time to time, that the skips would be overloaded, and we would make complaints about them being overloaded and men being crowded in the skip too heavily and mashed.

Q. Tell whether or not that was done from time to time during these three years from 1938 up to 1941, these complaints to Carson, or was it before, or before and since?

A. It has been within these three years, from time to time.

Q. All right. Now, you said that in respect to this portal to portal or collar to collar payment, so far as you knew that resolution was the first formal presentation to the company, and you said something about it being discussed and you didn't give a date. Were you referring to discussions with representatives of the company, whether they were formal or not, or were you talking about discussions where only union men were present?

A. Discussions in our organization.

Q. Discussions in your organization. Well, I don't think that would be admissible. Now, as to the slippery place or places that you walked over, you mentioned pipe lines. Did those slippery places ordinarily extend all along where the pipe lines were running in the manways? Is that what you mean, only part of the way, or were they found in other places?

A. They were found in other places, various other places in the mines.

Q. Are they greater or less, both in number and size, along the places where the pipe lines run?

A. Yes, sir.

Q. When I asked you whether the slippery places were greater or less you answered, "Yes, sir." Did you mean, "Yes, sir, they were greater," or "Yes, sir, they were less," along the pipe lines?

A. They are greater up and down where this pipe line ran.

Q. You told Mr. Burr that you signed the contract in Chicago in order to save your union. I will read Section 3 under Subdivision 1.

Mr. Burr:

No, sir, his question isn't stated correctly.

The Court:

What is that he proposes to read from?

Mr. Burr:

I just don't want that to go in as being answered differently now. I don't mind him reading it, but I don't want him to assume that is what the witness said.

Mr. Harris:

The record shows what the witness said.

Mr. Burr:

It shows what he said, and it shows a good deal more than that.

Q. Section 3: "The company agrees"—and then down under 3: "It will not in any manner dominate or interfere with the administration of the Mine Workers or with the Brotherhood of Mine Workers of Captive Mines, Ore Mine Division, or any other labor organization or its employees, or contribute financial or other support to any of said organizations." Do you remember that clause in the contract?

A. Yes, sir.

Q. Were there discussions as to what the company would do about this Captive Mine or Company Union that they had?

A. Yes, sir.

Q. And what was the discussion in Chicago as to what this company would do about the Union or Brotherhood of Captive Miners?

A. Well, at that time the company had a building on their property, and these Captive Miners or the Company Union, we called it, met there at that hall and they had protection of the company going through and they did their work there, and it seemed to us that the company was holding them under cover, that they were holding

that organization together, and we talked a whole lot about this being this company union, and during the discussion we told the Vice President of Raw Material about how the company had hovered them and that they had discriminated and given these men preference over union men and had discouraged the union men from even attending meetings, and different things that they did to discourage men to belong to our organization, and it was summed up and agreed that the company would not let them meet on the company property any more and that they would move off and would not contribute any support whatever to the Brotherhood of Captive Miners.

Mr. Harris:
That is all.

Mr. Burr:
Now, let me have that, if you don't mind, an exhibit.

Mr. Harris:
I don't think that is an exhibit.

Mr. Burr:
Give me that exhibit, that contract.

The Clerk:
You have all of your exhibits there.

Re-Cross Examination.

(By Mr. Burr):

Q. How long did that conference in Chicago last, Mr. Patterson, about how long?

A. Approximately four days, I think.

Q. Four days. And do you remember the discussion that you have just mentioned?

A. Yes, sir.

Q. Well, that is not all that was discussed there, is it? That wasn't all that was discussed there in those four days, was it?

A. No, sir, not all.

Q. Well, didn't you go over the contract, section by section?

A. Yes, sir.

Q. And you were asked if you remembered that section. Do you also remember this section, No. 4:

"Eight hours shall constitute a day's work and forty hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight hours in any one day or for all overtime in excess of forty hours in any one week.

"The eight hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

A. Yes, sir.

Q. That was discussed too, wasn't it?

A. No, sir, not only we agreed to take that from the—drawn up from the steel workers. This was the agreement that this was taken up from. We taken this agreement and drawed up our agreement for the ore miners from the steel workers' contract, with a few minor changes.

Q. Was it read and discussed, that provision?

A. No, sir, not in particular, that I know.

Q. You remember it; you didn't sign something that you didn't know about?

A. That is true.

Q. You agreed to it, didn't you?

A. Yes, sir.

Q. And you came back and submitted it to your Local?

A. Yes, sir.

Q. They agreed to it?

A. Yes, sir.

Q. And they signed it?

A. Yes, sir.

Q. And Mr. Robinson, your President, was there?

A. Yes, sir.

Q. And your lawyer, Mr. Pressman, was there?

A. Yes, sir.

Q. And Mr. Robinson signed it?

A. Yes, sir.

Q. And the provisions that Mr. Harris read to you, do you remember the number of that?

A. That is in the stipulation.

Q. It is not in this contract here?

A. No, sir, that is the stipulation.

Q. The stipulation was in reference to the undesirables?

A. The undesirables.

Q. That was discussed too.

A. Yes, sir. Well, mostly what was discussed, the stipulation, not the contract.

Q. Both of them were discussed together; you had to sign the contract to get the stipulation?

A. Yes, sir.

Q. That is what you assumed?

A. Yes, sir.

Q. Now, he asked you as to whether or not there were some other slippery places in the mine that were not so slippery as the one you told us about, 62 to 64, and you said there were. I just wanted to be certain whether or not your testimony was to the effect that neither you or, so far as you know, none of your men, were ever hurt during the thirteen years that you have been there.

Mr. Harris:

I didn't ask him any more about that.

Mr. Burr:

You asked him about different places. My question is the one he testified about.

The Court:

Go ahead.

Q. Does your statement to me that you had never had any accident yourself and your men had never had any, does that apply to all of the places that you had walked?

A. Yes, sir.

Q. You were speaking to Colonel Harris about the head miners being called in and the incentive plan being explained to them. Was that a meeting of the head miners just of your division that you are talking about, or was that a general meeting? Did you attend a meeting that Mr. Halfpenny and Mr. Ball conducted?

A. I don't recall.

Q. Were either one of them present at the meeting that you did attend?

A. I think Mr. Ball was. I wouldn't be positive.

Q. You don't remember Mr. Halfpenny?

A. No, sir, I don't remember Mr. Halfpenny.

Q. Now, you said something about that complaints had been made to Mr. Carson—I believe he is the mine foreman—didn't you?

A. Yes, sir.

Q. About the skip being overcrowded. Do you remember when those complaints were made?

A. At various times.

Q. Did you make them yourself, or how were they made?

A. I made them myself.

Q. You made them yourself?

A. The ones that I know about.

Q. That is what I want to find out, the ones that you know about. How many did you make about them being overcrowded?

A. About three or four.

Q. About three or four. When was the first one?

A. Probably about six or seven years ago.

Q. And then since then you have made two or three more?

A. Yes, sir.

Q. Without going into all of them, because I don't want to take that much time, but just what did you say to Mr. Carson?

A. Well, I would tell him the skip was being overcrowded.

Q. Just give the words as near as you can?

A. And I thought we ought to have somebody to see after it or check it, on the outside most especially going down, they just piled in there any way and couldn't nobody count them.

Q. I didn't ask you that, Mr. Patterson. I asked you for the exact language as near as you can give it. I want you to tell as near as you can what you said to Mr. Carson.

A. That is what happened.

Q. Well, what did you say to him?

A. That is exactly what I was saying to him.

Q. That is exactly what you were saying to him?

A. Yes, sir.

Q. Well, tell me again.

A. That these men would pile up there and nobody couldn't count them, that I thought he ought to put somebody out there to count them.

Q. What did he say?

A. He said all right, he would see after it; and he would see after it one day and it would go on again at various times until I would have to call his memory to it again.

Q. And the same thing would go through from four to six years?

A. Yes, sir.

Q. And that is the only complaint that you made about the matter?

A. That I can recollect.

Q. And you didn't go any further with it, with Mr. Cameron?

A. No, sir.

Q. Did your committee?

A. No, sir.

Q. Now, you were asked about the way you turned in your time sheets as head miner. That is the kind of time sheet you made out at that time, was it (indicating)?

A. Yes, sir.

Q. And you put here the names of the crew (indicating)?

A. Yes, sir.

Q. And the badge number over here (indicating)?

A. Yes, sir.

Q. Of course, your name would be here opposite head miner?

A. Yes, sir.

Q. And the drill runners there?

A. Yes, sir.

Q. Of course, there you would put eight hours of work?

A. Yes, sir.

Q. On each one of them?

A. Yes, sir.

Q. And that eight hours didn't include the traveling time?

A. No, sir, it wouldn't.

Q. It included the time from 6:45 to 3:15?

A. That is the way it was.

Q. And at that time you would make them out each day?

A. Yes, sir.

Q. And after making them out you would sign here (indicating)?

A. Yes, sir.

Q. And after making it out what did you do with it, turn it in to the mine foreman?

A. Turn them in at the tally house, since May 1st.

Q. I don't want anything that was done since May 1st. You turned them in at the tally house?

A. Yes, sir.

Q. And, of course, after that you don't know?

A. Yes, sir, I do know. We would bring them and turn them in to the time taker's shack. Before May 1st we had a little suitcase at first and we made a complaint about carrying them down in the skip and we got them put off inside at the time taker's shack where we load up on the skip coming out.

Q. Well, I didn't ask you about that. I asked you about do you know what became of this sheet after you turned it over to the mine foreman?

A. No, sir, I don't.

Q. That is what I asked you. Do you know what was done with it in the office?

A. No, sir, I don't.

Q. You don't know what was done with it after you turned it in?

A. No, sir, I don't.

Mr. Burr:

That is all, Your Honor.

Mr. Harris:
That is all, Your Honor.

The Court:
Court is adjourned until 1:30.

(Whereupon, at 12:15 P. M., July 24, 1941, a recess was had until 1:30 P. M. of the same day.)

After Recess, 1:30 P. M.

Mr. Harris:
Call Mr. Souggs.

2422 LEM SCRUGGS, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):
Q. What is your name, please, sir?
A. Lem Scruggs.
Q. How old are you, Mr. Scruggs?
A. Forty-seven.
Q. Where were you born?
A. In Georgia.
Q. How high did you go in school?
A. The fourth grade.
Q. How long have you been working in the mining business?
A. Approximately nineteen year.
Q. What company do you work for?
A. The T. C. I.
Q. How long have you been working for them?
A. About nineteen year.
Q. At what mine do you work for them?

A. At the present time at No. 11.

Q. How many different mines of theirs have you worked in?

A. I have worked in four different mines.

Q. Which ones?

A. No. 11, 12, 13 and No. 4.

Q. Eleven, twelve and thirteen, Ishkooda, and No. 4 is in the Muscoda Division?

A. Muscoda.

Q. During the time from October 24, 1938, up to May 1, 1941, the Ishkooda mines were running on a five-day shift per week, were they not?

A. Yes, sir.

Q. Does that apply to both day shifts and night shifts?

A. Yes, sir.

Q. In your work now just what are you doing?

A. I am head miner.

Q. Were you a head miner on October 24, 1938?

A. Yes, sir.

Q. What time did you report for work on the day shift in October, 1938?

A. Six o'clock.

Q. How many miners did you have under you?

A. Six.

Q. Did you turn in a brass check at the tally house?

A. Yes, sir.

Q. Did you ride down in a skip?

A. Yes, sir.

Q. Did the company require you to ride down in a skip?

A. Yes, sir.

Q. Did you see the mine foreman or assistant mine foreman around there from six o'clock, the time you reported, until you would go down on the man trip?

A. Yes, sir. The assistant mine foreman and the mine foreman would be there at the time?

A. Yes, sir.

Q. How far after you got off the man trip did you walk, the period from October 24, 1938, to the place where you actually drilled and blasted?

A. Well, it would vary. Some places I worked in was further from the man unloading station up.

Q. What was the farthest heading you worked in?

A. I would say it was something like six or seven hundred feet.

Q. That was the farthest?

A. That is from where we dumped the ore.

Q. Well, I mean when you got off.

A. Where we got off.

Q. At the man unloading station, how far?

A. It would be some eight hundred to a thousand feet.

Q. What headings have you worked in since October 24, 1938?

A. I worked in No. 65, 63, 67 right and 1st, it is now, it was 68 left then.

Q. In going down on the mantrip during this three-year period I have inquired about did either you or the men under you carry any tools with them?

A. Yes, we carried hangers and wedges.

Mr. Burr:

I didn't hear you, Mr. Scruggs.

The Witness:

My men has carried hangers and wedges.

Q. Did you or your men pick up oil at a place close to the man unloading station on your way in?

A. Yes, sir, my men did. The motor runner would pick up oil and dope for the motor and the drill helper would get oil for the drills.

Q. Now, did you, during this three-year period, turn in the time of your men?

A. Yes, sir.

Q. Did you regularly turn in eight hours on your time abstract, whether they were actually working eight hours or not?

A. Yes, they was—unless we had a breakdown and was called outside and then the mine foreman would put down the time we left and had the breakdown.

Q. And did you also follow the rule that you couldn't shoot until ten minutes past three?

A. Yes, sir.

Q. Did your assistants, that is, your muckers and helpers, stay at the drilling place until you started lighting fuses, or did they leave before you started lighting fuses, ordinarily?

A. We stayed until ten minutes after three and the lights went, and then everybody left except me and the drill man and the helpers.

Q. Did you ever make any complaints to the foreman or assistant mine foreman about the crowded condition of the skips?

A. Nothing more than we talked about the skips being crowded from time to time.

Q. How long, in your judgment, when you got out of the mine and were checking off at the end of your shift, did it take the men on the shifts you were to pick up their brass checks again?

A. Well, it didn't require very much time. I would say a minute or two minutes.

Q. Did that mean for the men in your crew or the men that were on the entire day shift?

A. Well, I don't know about the entire day shift because when we would come out on the skip I would come out. We would leave the tally house and go on to the bath house and change.

Q. But you would pick up your brass checks before you went to the bath house?

A. Yes, sir.

Q. And you would turn in your brass checks the first thing after leaving the bath house when you reported for work at the beginning of the shift?

A. When I reported for work at the bath house I turned in my check.

Q. Have you had any part in the negotiations—have you represented the union on any of the negotiations for wage contracts?

A. No, sir.

Q. Were you an officer of any of the unions in 1936 when the strike came right after the company proposed the incentive plan?

A. No, sir.

Q. You have never been an officer of the union?

A. I am an officer at the time, at the present time.

Q. Now?

A. Yes, sir.

Q. What is your position now?

A. Executive Board Member.

Q. How long have you been an Executive Board Member?

A. Well, about a year.

Q. Now, is there any substantial difference between the way men report for a night shift and the way they travel and the things they do for a night shift as compared to a day shift's work?

A. It is practically the same thing.

Q. Practically the same?

A. Yes, sir.

Q. Use the same tally house and the same man trips and the same manways and mine in the seam, stopes and headings?

A. Yes, sir. Of course, it is in the same heading. It might not be in the same stope. I probably might be doing developing work tonight, that is drilling, and then be dragging the next shift following.

Q. When you were paid during the three years that I have inquired about were you paid separately or were you—did you follow in line with other men that were paid?

A. I lined up with the others.

Q. And did any officer or representative of the company at any time after October 24, 1938, discuss with you these receipts that you were signing?

A. No, sir.

Q. Did anybody, whether you were there at the pay window or anywhere else, representing the company ever inform you that the company would use the receipts against any claim you might make for the benefits Congress had conferred upon you under the Fair Labor Standards Act?

Mr. Burr:

I am not renewing my objection to this on the theory that we have got one to all of this.

The Court:

Overruled.

A. No, sir.

Q. Now, after lighting your fuses how did you get out of the mine?

A. Well, we would come back the track where we tram out the ore and back up in there and wait at the man unloading station.

Q. Walking?

A. Walking.

Q. And then would you wait at the man loading station for a skip or would you find a skip waiting for you?

A. Well, we usually have to wait.

Q. About how long, ordinarily, would you have to wait?

A. Well, from five to twenty-five minutes.

Q. Did you have anything to do with when the skip would start from the man loading station to the top?

A. No, sir.

Q. Did you have anything to do with running the skip?

A. No, sir.

Q. Now, in going in did you and your men pick up oil anywhere near the man loading station to use in your drills?

A. Yes, sir, we had to get oil every shift.

Q. You had to get oil every shift?

A. Yes, sir.

Q. And carrying it from the man unloading station or the place near the man unloading station up to the drills?

A. Yes, sir.

Q. About how much oil did your drill use per day?

A. They use about a gallon. We use a gallon can. It might be a little left in the can at the end of the shift.

Mr. Harris:

I believe you can take him.

Cross Examination.

(By Mr. Burr):

Q. Mr. Scruggs, you say all of your mining experience has been with the Tennessee Company, I believe?

A. Yes, sir.

Q. And you have been working for them continuously for the past nineteen years except a few times you were off, I guess, on visits for yourself, I believe?

A. Yes, sir.

Q. And came back and went back to work for them and you have been a head miner for about how long?

A. Well, I have been a head miner ever since that name was used.

Q. Since the incentive plan started?

A. Yes, sir.

Q. You have been a head miner ever since?

A. Yes, sir.

Q. Now, as head miner you have charge and you are the boss over six men?

A. Yes, sir.

Q. Those six men and yourself work in whatever stope or working place you have been assigned to?

A. That is right.

Q. And you generally stay in the place until it is finished and go to another place, of something of that sort?

A. Yes, sir.

Q. As an ordinary proposition?

A. Yes, sir, we usually work out.

Q. Now, the first thing you do is to go to the bath house, of course, and change to your work clothes?

A. Yes, sir.

Q. Then you go down and the next thing you do is to get your carbide?

A. Yes, sir.

Q. And that takes up just a fraction of a second or minute?

A. That doesn't take any time.

Q. That doesn't take any time?

A. Just a short time.

Q. Carbide has always been purchased by the miners ever since you have been working?

A. How is that?

Q. The miners have always furnished their carbide ever since you have been working, and it is their light?

A. Yes, sir, each individual.

Q. And the clothes and the shoes?

A. Yes, sir.

Q. And the next thing you do after you get your carbide you hand your check in?

A. Yes, sir, we check in until six o'clock.

Q. Well, the first skip doesn't go down until about 6:05, does it?

A. Well, I would say it would go down somewhere about that.

Q. Somewhere about that. And the men catch such skip as they see fit to ride on. You are not assigned to a particular skip. You were not and you are not now, for that matter. But I will ask you before May 1, 1941 you took whatever skip that you happened to catch, that you wanted to catch?

A. I do. There was some of the men assigned to each skip.

Q. I am talking about you and your crew. You were not assigned to any particular one?

A. One of my men was.

Q. Which man was that?

A. That is the man that drove the mule.

Q. He was assigned to the first skip?

A. Yes, sir, they asked him to go down on the first skip.

Q. You had a mule driver in your place?

A. At that time.

Q. And just about two mules left in the mine?

A. I don't know at the present time?

Q. Well, along back then?

A. There was some seven or eight or ten.

Q. When was that, Mr. Scruggs, when they had as many as eight mules over there?

A. About three years back.

Q. About three years back. All right, sir. With that exception the rest of them, all that they were required to do was to be at their working place at 6:45?

A. Yes, sir, they were supposed to be there.

Q. They were supposed to be there and they could go down as they pleased? Now, as head of that crew your first duty was to see that the place was safe?

A. My first duty was to see that the men checked in at the tally house.

Q. It was your duty to see that the men left the tally house?

A. Yes, sir.

Q. That was to see whether or not you had a vacancy on your crew?

A. That is right.

Q. But they didn't have any particular skip; they could go on any particular skip they pleased?

A. Except this one man.

Q. Except this one man. I am leaving the mule man out, of course. If there was a vacancy on your crew you would report it to the mine foreman or the assistant mine foreman?

A. Yes, sir.

Q. And he would assign the man to you?

A. If he had him there.

Q. If he didn't have him there would he get him there?

A. Sometimes we had a short crew.

Q. Five men?

A. Yes, sir.

Q. And if that vacancy was filled the mine foreman would fill it?

A. If he could.

Q. If he couldn't fill it you had to work with five?

A. We had to work light.

Q. You wouldn't go down on the man skip with the foreman or assistant foreman, would you?

A. I have.

Q. You have, but I mean ordinarily, usually.

A. No, sir, I usually rode different skips.

Q. Did I understand you to say that the mine foreman and the assistant mine foreman stayed at the tally house until all the men were checked in, or not?

A. Yes, sir, they did at that time.

Q. Well, has that always been the custom that they stayed there?

A. Yes, sir.

Q. Then they didn't ride down on the skip only in exceptional cases. If they stayed on top they didn't ride down.

A. Yes, sir, they would ride a drag to themselves.

Q. A what?

A. They would ride a drag to themselves if there wasn't but a few men left to go down.

Q. You didn't go down with the same crowd every morning, then?

A. No, sir, I wouldn't.

Q. You didn't necessarily go down with the same members of your crew; sometimes they would catch one and sometimes catch another?

A. That is it.

Q. And when you got down to the bottom you didn't walk up to your working place with the same people all the time, did you?

A. No, sir. Probably a few men would be there one morning.

Q. And sometimes somebody else, different companions going down. Would you usually find your men at the stope where you were working when you got there, or would they usually come after you?

A. Well, they would be—the majority of them would be there waiting for me.

Q. The majority of them would be there waiting for you?

A. Yes, sir.

Q. Of course, under the rules and under the practices as head miner they wouldn't go into that place until you had gone in and examined it and declared it safe?

A. Well, they wouldn't go to work until the lights came on.

Q. They would not?
A. No, sir.
Q. That is right. The lights came on at 6:45?
A. 6:45.
Q. And that is when pay began, too, isn't it?

Mr. Harris:
We object to that, if the Court pleases.

Q. Isn't that when your pay was timed, from 6:45?
A. Well, we got paid at the rate down—
Q. At 6:45?
A. They counted it from the tally house at 6:45.
Q. You didn't get but eight hours, did you?
A. That is all.
Q. Well, you didn't go to work until the lights came on, did you?

Mr. Harris:
We object to that question. It is a question for the Court to decide when he went to work.

The Court:
I think that is a question for the Court.

Q. Well, what did you men do until the lights went on?
A. We would stay there and wait for them to come on.
Q. Then you would just stay and wait for them to come on?
A. Yes, sir.
Q. And when the lights came on what did you do?
A. We would go on to the places and begin taking down bad, loose material or prepare to start a drag; clean up.
Q. Where was it that you would stay and wait for the lights to come on, some distance back or where?

A. Two or three hundred feet back.

Q. Two or three hundred feet back from where you went back to see if your place was working before you started drilling?

A. That is right.

Q. And your loading crew would do their work during the day and you and your crew would look after shooting down the ore?

A. I would see after the whole crew.

Q. I know you bossed the whole crew, but you had it kind of divided, didn't you?

A. Not necessarily.

Q. Not necessarily; sometimes one did one thing and sometimes one did another. Now, your lights flashed for shooting at 3:00, did they?

A. 3:10.

Q. And who stayed around there shooting?

A. Me and the drill runners.

Q. And then you and the others, where did they go?

A. They would go on up out of the way of the shots.

Q. Would they go on to the hoodlum?

A. Yes, sir.

Q. Or the loading station. They would just go on up and when they got there they had seats there where they would sit and wait for the skip?

A. No, they have benches.

Q. Benches?

A. Some of them. Some sat on the tracks.

Q. And the first ones there would sit nearest the skips until the benches gave out and then on the track?

A. Yes, sir.

Q. And then they were loaded in accordance with the way they were sitting, just take their turn in the way they were sitting?

A. Each man had—

Mr. Harris:

Wait a minute there. Each man had to—you started out, each man had to do something about the skip.

A. He had to take his turn.

Mr. Burr:

That is what I thought he said.

A. (Continuing.) In the line.

Q. I didn't mean to interrupt you, Mr. Scruggs. If I do you stop me. I thought that is what I understood you to say. Each man takes his turn as the skip comes?

A. Yes, sir. They are not allowed to run in front of one another.

Q. Then you go on out and pick up the check as you go out?

A. Yes, sir, pick up the check as I go out.

Q. Now, you told Mr. Harris that it took your crew just a minute or a minute and a half for all of them to deposit their checks going in. Does it take about the same time coming out?

A. I told Mr. Harris each man. I wasn't speaking about myself.

Q. Each man would take how long?

A. It would take me a minute.

Q. I see. Now, where do you count that from, when he walks from the carbide place, or does it take him that long to hand in the check?

A. It will take him that long after he gets out of the skip.

Q. It will take him that long after he gets out of the skip?

A. Yes, sir.

Q. And after that he goes to the bath house?

A. Yes, sir.

Q. One or two questions about the walking distance. Of course, the walking distance depends on how far away your working place is.

A. Yes, sir.

Q. From the underground loading station. Now, turning in the time of the men, that was your job; you kept these time sheets each day?

A. Yes, sir.

Q. Now, they had you to put down each man's name, his badge number and eight hours in the mine?

A. Eight hours on the time sheet.

Q. And if there were any exceptions, if anything happened, or a man got sick, you would note that on the time sheet and turn that in?

A. If something happened to him that he had to go out at eight o'clock or nine o'clock.

Q. You note that on your report?

A. Yes, sir.

Q. Now, the nineteen years you have been working, you have never been paid for traveling time, have you, Mr. Scruggs?

A. No, we have not. We have always—

Q. That is what you—

Mr. Harris:

Wait a minute. You have always, what?

The Witness:

We have always had to take the hours from face to face.

Mr. Burr:

That is right.

Q. Did you finish?

A. Yes, sir.

Q. Have you always done that, taking hours from face to face ever since you have been working there?

A. We have ever since the incentive plan.

Q. Before that?

A. It was ten hours.

Q. And it was ten hours all the while and it was ten hours from face to face?

A. It is what we got.

Q. And since it has been made eight hours—it was made eight hours in 1933—you went on the eight-hour basis?

A. '33?

Q. Since then it has always been on the eight hours?

A. That is what we got paid for.

Q. And the time has run since that time, from May 1, 1941, from 6:45 in the morning until 3:15 in the afternoon with thirty minutes out for lunch?

A. We have to report for work at six o'clock.

Q. Where are you talking about having to report for work at six o'clock?

A. At the tally house.

Q. When you say you report for work you report at the tally house?

A. Report at the tally house.

Q. You didn't include that time from then on until 6:45 in your eight hours?

A. We had to stay at the working place eight hours.

Q. You had to stay at the working place eight hours; and if I understand you, the reporting for work you are talking about is what you did at the tally house?

A. That is where I got my orders, if there was any changes to be made.

Q. What is that?

A. That is where I got my orders if there was any changes to be made, at the tally house.

Q. You mean the changes in the working place?

A. Yes, sir, and the way we might work.

Q. You didn't get those orders very often, did you?

A. We would get them very often if we had a bad top, a dangerous top.

Q. Let's see the places you say you have been working in during the four years to May 1, 1941.

A. How many places?

Q. Yes.

A. I have worked in 63, 65—

Q. 63 and what else?

A. 65.

Q. 65.

A. 67.

Q. 67.

A. And 68 and the 1st right.

Q. 68 and the 1st right. Now, those working places you worked in there over what period of time the two years before May 1, 1941?

A. Those places I just spoke of?

Q. Yes.

A. I have worked in them in the last three years, in different places in the last three years.

Q. You mean the last three years from now?

A. Yes, sir.

Q. From now you are talking about?

A. Yes, sir.

Q. Now, which ones have you worked in since May 1, 1941, so I can know which ones you worked before that time?

A. Let me correct that. You said from May 1st?

Q. Prior to May 1st, the two years just before May 1, 1941. Three years, make it.

A. Three years?

Q. From May 1, 1941, yes.

A. Let me have the question.

Q. Could you tell me in what places you have worked in during the three years just before May 1, 1941?

A. I worked in 63.

Q. All right, sir.

A. 65, 67, 68 and 1st right.

Q. That is the same you gave me a few minutes ago.

A. Yes, sir.

Q. Have you kept pretty well substantially the same crew during all of that time; have you had the same crew working with you?

A. No, sir.

Q. You have changed about?

A. Yes, sir.

Q. Now, what do your men get the oil in?

A. They get it at the oil house.

Q. I say, what do they get it in?

A. Oil cans.

Q. Gallon cans?

A. Gallon cans.

Q. And you use one gallon a day?

A. Yes, sir.

Q. Now, if you run out of oil up in your heading can you send a man back for oil?

A. Yes, sir.

Q. And do do it occasionally?

A. Yes, sir.

Q. If you run out of wedges and hangers you send back for them?

A. Wedges and hangers are kept locked You see the mine foreman.

Q. You see the mine foreman and get a requisition for them?

A. Yes, sir.

Q. But you could do that and did do that?

A. We have.

Q. And the same is true of hangers and hanger steel?

A. Yes, sir.

Q. They were kept locked up, or were they kept in the tool house?

A. They were kept locked up.

Q. And if you wanted to get one of them in the middle of your shift you would send one of your men to the mine foreman to get them?

A. Yes, sir.

Q. Of course, if a man went back in the middle of the shift for oil or anything else he walked back to the place where the oil was, to the tool box, is that right?

A. Yes, sir.

Q. And then he had to walk back with the oil to his working place?

A. To his working place.

Q. So as you stated on the hearing here last January, 1941, you said that the men may be asked to get such supplies or jackhammer steel, oil for the drags and drill, although most of them can get the jackhammer steel underground. Now, who asked them to do that, you or he?

A. I asked the mine foreman where he would run out of oil.

Q. If they could pick it up on the way in?

A. Yes, sir.

Q. I see. Well, of course, if the man picked it up on the way in, why he would get off at the unloading station and walk past the oil place, wouldn't he?

A. Well, I wouldn't have to tell my men. In other words, I wouldn't have to ask the mine foreman to get oil. That would be when they would have to carry oil from the outside.

Q. That would be when they would have to carry oil from the outside. Let's get oil on the inside. If that man when he gets off at the unloading station and goes to his working place, he has to pass by the place where they keep oil in a drum?

A. Yes, sir, he has to pass by the place they keep oil.

Q. On his way. And then he usually gets a gallon of oil?

A. Yes, sir.

Q. I believe you said on each shift. It doesn't take all six men, of course, to carry that gallon of oil?

A. One man.

Q. One man gets it. Does the same man get it every day, or not?

A. Well it is the same man used on the drill.

Q. Usually the same man, and he will get it—well, he gets it and then takes it along with him to his working place?

A. That is right.

Q. Now, if that can should give out and you needed oil during the day and you sent that man back for oil he would come back to the same place to get the oil?

A. The same place.

Q. And walk back to the same place. How about the wedges and the hammer steel? Did they get that too? I believe you said sometimes as they pass by the tool box, or is that gotten in some other way?

A. We get our wedges and hangers and jackhammer steel at the tool house.

Q. You get your wedges, hangers and jackhammer steel at the tool house. If you need those during the day, you are the boss, you can send the man back to get them, can't you?

A. Yes, sir, I would send them.

Q. And you do send them back. Of course under this incentive plan each head miner tries to keep as far ahead in supplies as he can, doesn't he Mr. Scruggs, so he doesn't have to stop work?

A. Yes, sir, he tries to.

Q. He wants as many wedges and as many jackhammers as he can get?

A. Yes, sir.

Q. And when you run out you can just send your man back to get them?

A. If they have them.

Q. If they have them. If they don't have them, call on the mine foreman for them?

A. Sometimes they haven't got them in the mine.

Q. They haven't got them in the mine occasionally. How often does that happen?

A. It will happen every three or four months.

Q. Every three or four months, and there are occasions when you would get them on the outside?

A. He would pick up old hangers on the outside.

Q. Pick up old hangers on the outside. Would your men carry them down?

A. Carry them down, yes, sir.

Q. Well, now, about the hangers, do you carry them all at the same time that just once every three months that would happen, or would one carry them or six or seven or how many?

A. He would carry down two.

Q. You mean one man would carry down two?

A. One man could carry down two.

Q. On those occasional times and that would happen about once every two or three months?

A. Yes sir, I would say about every two or three months.

Q. Now, getting them that way kept you from having to wait until the mine foreman sent to the supply house to get them?

A. Yes, sir, kept me from having to wait until he could send and get them.

Q. And you as a head miner could call on the mine foreman for supplies at any time, couldn't you?

A. I did.

Q. And he would supply them?

A. If he could.

Q. If he could not it was handled in the way you told us?

A. We would have to get them outside.

Q. Then you would have to get them if you worked?

A. That is right.

Q. If you didn't have them in your place. Of course, if you had them in your place you could go ahead and use what you had?

A. That is right.

Q. That is right. Now, I believe you said you never got them yourself at all; your men would do that, of course?

A. My men would get them.

Q. Your men would get them. You didn't carry any hangers down on these occasional trips on the man trip yourself; the men would carry them down?

A. That is right.

Q. There would be two of the men you would tell to do it, to get oil, hangers, hammer steel and C-hooks and supplies of that kind at the tool house, you would tell the men to get them?

A. I would tell them.

Q. And you would either send back for them or they would get them on the way up to the loading station?

A. That is right.

Q. You couldn't get mine powder, of course, that way, you had to make a requisition for that?

A. You had to make a requisition for it.

Mr. Harris:

Judge, I don't know how long this business of letting the lawyer testify is going on.

Mr. Burr:

It is cross examination.

The Court:

This is cross examination.

Q. I asked you could you get powder that way?

A. We sent back.

Q. With a requisition, didn't you?

A. That is right.

Q. And that you generally did along about what time of day, Mr. Scruggs?

A. Well, that runs around—well, at the present time—

Q. The way it runs from, do you know, not now, but before May 1, 1941?

A. I would say up to about two.

Q. That was while your work was going on up in your stope, of course, when you sent for the powder?

A. We sent for powder and tools.

Q. Now, did I ask you, Mr. Scruggs, as to when the signal was given for closing the work at your stope? Was that 3:10?

A. 3:10.

Q. Did you always wait until 3:10 to do your shooting?

A. Most of the time. We have a few times left anywhere after three o'clock.

Q. Anywhere, I see, between 3:00 and 3:10?

A. If we had a dangerous stope and we figured that shots from other places might jar it.

The Court:

I can't hear you.

Q. Tell us again.

A. If we was working in a dangerous stope where the top was bad we would try to light in time before somebody else might light and jar the rocks loose at the last hole.

Q. Then you shot and that was the end of any work you did that day except to go out of the mine?

A. After the shots were made.

Q. You came out to the loading station?

A. Came out to the loading station.

Q. And went out of the mine; caught your skip. All right, sir, will you, please, sir, look at this T. C. I. Exhibit 31. I just want to identify this to save putting them all in. You got on each payday, didn't you, a statement of your earnings?

A. Yes.

Q. On a form like this?

A. We do right now.

Q. Well, you have been doing that for a long time, haven't you?

A. Not like this one.

Q. Well, substantially the same?

A. Well, we would get a master statement once a month, and if three paydays would be two like this one.

Q. Well, the master statement gave the same sort of information that this gave?

A. Yes, that gives the stoppages.

Q. That gives what you made and that gives the total amount and what you have got left?

A. That is right.

Q. For instance, using this as an illustration, in September, 1940, you made that week thirty-two hours and your rate was 77 cents an hour as a head miner, guaranteed rate?

A. Was at that time.

Q. So that was the amount that you got. Then you also got a bonus if you made over a certain amount, under the incentive plan?

A. If we loaded over a certain tonnage.

Q. That is what I mean. You got a bonus and you got $23.71, which made your earnings on this payday $50.09, then you had a deduction of $2.30, Alabama Unemployment Insurance, Federal Old Age Benefit Tax and Medical, and you got your check for the balance?

A. Yes, sir.

Q. That is the way it was handled?

A. Yes, sir.

Q. And it has been handled that way all the time except one time, your recollection is, you got a master statement?

A. Yes, sir.

Q. That covered how much?

A. It covered four paydays.

Q. Covered four paydays instead of getting one with each receipt?

A. That is right, we got the master, four paydays.

Q. Well, is it your contention in this case, Mr. Scruggs, that you have not been paid the time you spent in traveling, getting up to your working place?

Mr. Harris:

We object. The claim shows for itself.

Mr. Burr:

I am asking him.

Mr. Harris:

We object to what his contention is. The claim shows what his contention is and his lawyer makes his contention in Court, if the Court pleases.

The Court:

Overruled.

Q. Is that your claim, Mr. Scruggs?

A. That is right.

Q. Now, of course, ever since you have been working there these nineteen years you know that you never have been paid for that traveling time?

Mr. Harris:
He asked him that once before.

Mr. Burr:
No, sir, I don't think so.

The Court:
Well, I will let him answer it.

Q. You know you have never received pay for that traveling time during that nineteen years?
A. I haven't received pay since we went to work on the eight hours.
Q. Well, you had been on ten hours, hadn't you?
A. Well, in a way we were not compelled to work to the minute like we have since then.
Q. You mean on the ten hours when you got through your work you could leave the mine sooner, is that what you mean?
A. Yes, sir.
Q. When did you get on the eight-hour day?
A. '33.

The Court:
I think you have been over that. 1933.

Mr. Burr:
I think now, Your Honor, that is about all I want to ask him. Just one minute.

Q. Just one other thing. You told Mr. Harris that there has been no complaint about the skips, "nothing more than we have talked about the skips being crowded." Who did you talk to?
A. We talked to the man in charge of the skip.
Q. The skip rider?

A. The skip tender.

Q. The skip tender. All right.

A. Or the assistant mine foreman or mine foreman.

Q. Do you remember what assistant mine foreman you ever talked to about it being overcrowded?

A. Mr. Patterson and Mr. Burgess.

Q. And what would be just about what you would say about it, without going into all of the different details?

A. We would tell them there was too many men loaded in the skip.

Q. And what did they say?

A. They would say yes, there was too many in that one, "and we will watch it next time and not put so many in it."

Q. Did you ever speak to Mr. Cameron about it?

A. I never did.

Mr. Burr:

That is all.

Re-Direct Examination.

(By Mr. Harris):

Q. Do you know what the other men were paid that were working in your crew?

A. No, sir, I couldn't say.

Q. Did you mean to say that you got a master statement just one time for one month or over a long period of time you got a master statement once a month?

A. We got a master statement over a month's period.

Q. Yes. And how many years or months was it that they paid you under the master statement?

A. Well, I will say a year.

Q. Now, these time abstracts that you filled out to turn in to the company, how did you get those down into the mine?

A. We had a little wooden box made about one by twelve by fourteen that we carried the sheets in.

Q. Did you carry the sheets down with you on your mantrip?

A. Yes, sir.

Q. As you went down into the mine?

A. Yes, sir.

Q. You stated a while ago, or Mr. Burr asked you another question so fast at the same time that you didn't get a chance to finish it and you got as far as this: "We would ask the mine foreman." Now, what different things would you ask the mine foreman or assistant mine foreman about after reporting for work and even catching the man trip down?

A. Well, we would ask him about different things, probably, that I had ordered before that time, such as if he had gotten my hose pipes, or if he had got me a new drag or things of that kind.

Q Would you discuss with the mine foreman or the assistant mine foreman the presence or absence of a member of your crew; if a man was short would you discuss it with him?

A. Well, I usually—if someone in the mine would tell me that such and such a man was off, that he was sick, or he was just off, I would report to the mine foreman that this man was off.

Q. Was it your duty to make that report to the mine foreman before you went down in the mine?

Mr. Burr:
We object to the form of the question.

The Court:
Overruled.

Mr. Harris:
I withdraw it.

Q. Were you required to report to the mine foreman that a man was short, at the skip?

Mr. Burr:
I object to that.

The Court:
Overruled.

A. Yes, sir.

The Court:
I didn't get the answer.

The Witness:
Yes, sir, we were required to do it.

Q. I believe I asked you but I want to be sure, were you required to ride a man trip down after reporting at six, or could you walk down in the mine if you wanted to?

A. We was required to ride down.

Q. Mr. Burr asked you if you worked about the same crew these three years. In your best judgment, how many different changes of men in your crew have taken place during the three years from October '38, to May 1, '41?

A. Well, I would say I have worked fifty or more different men.

Q. Fifty or more different men, and the crew since the incentive plan was handed to the miners has been you and six others.

A. Yes, sir.

Mr. Harris:
I believe that is all.

Re-Cross Examination.

(By Mr. Burr):

Q. These crew changes, the head miner, you, I will say, you request changes every now and then, don't you?

A. I have requested a change one time.

Q. Was your request granted, or not?

A. It was, later on.

Q. And the other changes were due to first one thing and another?

A. Absence.

Q. Absence or something of the sort?

A. Absence or something of that sort.

Q. Now, you say that what you would ask the mine foreman there at the tipple house would be you would ask him about hose you asked for and the requisition, whatever you would ask for?

A. Yes, sir.

Q. A hose pipe and things like that?

A. We would order a hose pipe and it would be two or three days before we would get it and we ask him if it had come in.

Q. And he would tell you it had?

A. Sometimes he would and sometimes he would say he didn't know.

Q. Now, I want to ask you this final question: The practices you have been testifying about, the way you got on the skip and the way you deposited the check and took it up and go down and get into your working place, the way you got your supplies, has the same thing been in effect ever since you have been working there, or substantially the same thing?

A. We have always got—

Q. The practices you have testified about have been substantially the same?

A. The same, that is right.

Mr. Burr:
That is all. Come down.

(By the Court):
Q. Mr. Scruggs, what were the hours, the time, you are required to be at the tally house ready to go down in the morning?
A. Six o'clock.
Q. What time are your men?
A. My men are required to be there and check in the numbers to me at six o'clock.

Mr. Harris:
That is all.

Mr. Burr:
Wait a minute.

(By Mr. Burr):
Q. Who required you to be there, that is what I want to find out, at six o'clock?
A. Mr. Cameron.
Q. Did he tell you to be there at six o'clock?
A. Yes, sir.
Q. When.
A. In a meeting when they presented the incentive plan.
Q. He called you head miners in and had a meeting with you?
A. That is right.
Q. And that was when the incentive plan was explained to you?
A. That is right. He called—
Q. Is that the time—

Mr. Harris:
Let him answer.

Q. Go ahead.

A. He called the foremen in at that time and told them about the incentive plan would take effect at a certain date.

Q. Now, is that the time that you say that you were required to be there at six o'clock, is that when you got that?

A. Yes, sir, he told us that all head miners that was chose as head miners was required to be at the tally house at six o'clock to check in the men.

Q. Anything else that he told you?

A. Yes, sir, he told us what the tonnage would be.

Q. Told you what?

A. Told us how much tonnage we would have to get.

Q. Anything else?

A. He told us our crew would be changed from nine to seven.

Q. Anything else?

A. And they was going to pick out the head miners later on.

Q. Anything else?

A. Well, I don't recall just what all.

Q. Was Mr. Patterson at that meeting?

A. Well, I really don't know.

Q. Do you recall who was there besides yourself?

A. At the meeting?

Q. Yes.

A. All the foremen.

Q. Do you remember any of them that were there?

A. There was some fifteen to twenty-five men there.

Q. Do you remember any of them?

A. Yes, sir.

Q. Can you give the names of some you say were there?

A. Well, there was Tobe Webb, and Mr. Crowder, two of the Mr. Crowders, and Mr. Stone and Mr. Moore and several colored foremen.

Q. Now, I want to get the time of that as near as I can. Was that before the incentive plan started?

A. That was before the incentive plan was started.

Q. Now, how long was it before the incentive plan started?

A. It was fifteen days, maybe, before.

Q. Was it at that meeting that the explanation was made to the Smelters Union men and they declined to work under the incentive plan, or was it before the strike or after the strike?

A. This was before the strike.

Q. So this meeting you are talking about when you say you were required to be at the tally house at six o'clock was before the strike of '36?

A. That is right.

Q. That is the only way that you ever got any instructions of the sort?

A. Except for the time the mine was shut down and the crews were changed.

Q. But that is the only time you got instructions from Mr. Cameron to report at the tally house at six o'clock, the head miners?

A. Yes, sir.

Q. Now, don't you know, Mr. Scruggs, that the head miners, all of them, never have reported at the tally house at six o'clock?

A. Well, I have.

Q. I am talking about all of them. You were first asked about any others.

A. Well, I wouldn't say about that because that wasn't none of my business.

Q. Well, you could look around there and see?

A. I could see a good many.

Q. You never have, as a matter of fact, reported at all at six o'clock, have you?

A. Thereabouts.

Q. What do you mean by thereabouts?

A. Ten or fifteen minutes after six. At first I reported there that late.

Q. Now, some of your men went down in the mine and were down in the mine then, weren't they?

A. Well, no, they usually waited on me.

Q. Well, did they wait on you?

A. Yes, sir.

Q. Have they always waited on you since you have been head miner?

A. No, sir.

Q. When was it they first waited on you?

A. Two and a half years ago.

Q. You mean to say that you and your men got together at the tally house and you checked them in and you all rode down on the same skip, do you or not?

A. We didn't get together. One man walked over and handed me his check and walked over and caught the skip.

Q. Is that all he did, to hand you his check?

A. Yes, sir.

Q. What did you do?

A. I waited until my crew got there.

Q. You waited until your crew got there and handed in your check?

A. Yes, sir.

Q. And then you got your vacancies supplied?

A. Yes, sir.

Q. And that is all you did?

A. That is what we did.

Q. And that is what you call reporting for work, checking your crew in?

A. Yes, sir.

Mr. Burr:

That is all.

(By Mr. Harris):

Q. And during that whole three years when you reported at six o'clock did you have a skip tender for the skip there?

A. Yes, sir.

Q. And did the company wait until 6:30 or 6:45 or did they start running that skip within a few minutes after six?

A. They started running a few minutes after six.

Q. And you say you would at some times get there at 6:10, but ordinarily what was your time that you got there when you were on day shift?

A. Six o'clock.

Mr. Harris:

That is all.

The Court:

I want to ask him: Were you dressed for mining when you got there?

The Witness:

No, sir.

The Court:

You changed?

The Witness:

When I got at the bath house.

The Court:

From your business dress to your work clothes?

The Witness:

Yes, sir.

Re-Cross Examination.

(By Mr. Burr):

Q. You always caught the first skip down, didn't you?

A. No, sir.

Q. What skip did you catch?

A. Well, I would catch maybe the second skip one time and maybe it would be the last one, the next skip or the fourth one.

Mr. Burr:

I see. All right, come down.

The Court:

Your men, did they all go down before you did, as a rule?

The Witness:

Most of them. Probably there would be one that didn't get down.

The Court:

All right. We will take a recess for a few minutes.

(Thereupon, the statements of earnings of the witness Lem Scruggs, for one week of the month of September, 1940; showing incentive plan earnings and deductions, was identified as T. C. I. Exhibit No. 31.)

The Court:

Who will you have?

Mr. Harris:

Call Asberry Howard.

2461 ASBERRY HOWARD (c), being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. What is your full name?

A. Asberry Howard.

Q. How old are you Asberry?

A. Thirty-five.

Q. Where were you born?

A. I was born in Autaugaville, Alabama

Q. And how high did you go in school?

A. I went through the eighth grade.

Q. How long have you been working in ore mines in the Birmingham District?

A. Seventeen years.

Q. You say you are thirty-five years old now?

A. Yes, sir.

Q. So you began working in the mines when you were eighteen?

A. That is right, yes, sir.

Q. Have you done all your work for one company, or have you worked for different companies?

A. I worked some for different companies.

Q. What different ore mining companies in this district have you worked for, Asberry?

A. I worked at the Republic a short time and about a year at Sloss.

Q. And then all the rest of the time at the T. C. I.?

A. Yes, sir.

Q. What kind of work did you do at the Republic?

A. I was hand loading down there, first mucked.

Q. What did you say you did at this mine?

A. At the first mine I fist mucked.

Q. Asberry, just what is meant by the phrase, "fist mucked"?

A. The phrase of "fist mucked" is you take a shovel and go down and get it and throw it up that way.

Q. How is that?

A. You take a shovel and you have got to scoop it down here and get a load and throw it up in the car. That is called fist mucking.

Q. You did fist mucking for the first company. Now, what did you do for the second company?

A. For the second company was the Tennessee Company. I was first employed there as a mule boy.

Q. How long did you work as a mule boy?

A. Just short of two years.

Q. Well, now has all that work for the Tennessee Company been in the same mine, you say, or have you worked in different mines?

A. I worked at No. 4 Muscoda, No. 6 Muscoda and No. 11 Ishkooda.

Q. Now, where was it you were a mule boy?

A. That was at Muscoda No. 4.

Q. Two years then after you finished your work as a mule boy at Muscoda No. 4 what work did you do, and where?

A. I taken extra track work at No. 4.

Q. What do you mean by extra track work?

A. That was that I caught extra days on the track crew when the regular man wasn't there, why I caught a shift on the track crew.

Q. You mean you didn't have a regular job all the time, and if a man on the regular job didn't show up they would notify you to be there and work?

A. Yes, that is right. I usually done that.

Q. Then what was your next job after your extra track work?

A. Was a carpenter helper.

Q. At Muscoda?

A. At Muscoda No. 4.

Q. How long did you work as a carpenter helper, approximately?

A. I worked as a carpenter helper approximately five years, in the neighborhood of that.

Q. So all of that time has been at No. 4?

A. All of that time at No. 4.

Q. Well, now, as a carpenter helper at No. 4 did you work outside the mine or inside the mine, or both?

A. I worked inside the mine practically all the time. I was working on the outside some, square-setting the slope, just a short while I imagine.

Q. Then when you finished your work as a carpenter's helper what did you do, and where?

A. I began as a mucker at No. 4 mine.

Q. Now, were you a fist mucker there?

A. I was working on the mechanical loader at No. 4 mine.

Q. How long did you work as a mechanical loader at No. 4?

A. I worked, I imagine, around two years.

Q. And then what did you do, Asberry, after you worked as a mucker at No. 4, what was the next job you had?

A. The next? That is all I done there at No. 4. That was my last time.

Q. Then where did you go from No. 4?

A. I went—

Q. No. 6?

A. No, sir. Let's see. There was a shut-down and at the No. 4 they had shifts divided into No. 1, 2 and 3, and that is the period of time during that time I worked a short period at No. 6.

Q. About how many months did you work at No. 6?

A. I don't know just how long I worked at No. 6. The biggest time I worked at No. 4.

Q. How long have you been working at No. 11?

A. I have been working at No. 11 since October 10, 1938.

Q. And what kind of work have you done at No. 11 since October 10, 1938?

A. I first was a section helper. I was working on the mechanical loader and then as a section helper there why I also drove a mule. That was my duty to get this mule and get him to the working place.

Q. How long did you have to work the mule? I don't mean per day, but how many months was it that you had charge of the mule?

A. I had charge of the mule from the 10th of October until May. I mean the 10th of October, 1938, until about May, '40, in that period.

Q. And from May, '40, up to May 1, 1941, what kind of work did you do?

A. I still was a section helper. Well, I was a section helper but I didn't have to fool with a mule.

Q. You have never been a head miner, then?

A. No, sir.

Q. Have you ever been a drill man?

A. No, sir, I have never been a drill man; just drilled a few shifts.

Q. Then your work has been loading ore into the cars?

A. Yes, sir.

Q. And at first you loaded with a shovel?

A. Yes, sir, that was at Republic, that is right.

Q. And now, all your work at Ishkooda you loaded with a mechanical loader?

A. Yes, sir.

Q. Now, as a section helper are you in charge of the mechanical loader, or is some other man in charge over you as to the mechanical loader, or did you have anybody in charge of it?

A. It is another man in charge of the mechanical loader.

Q. Now, Asberry, beginning on October 24, 1938, up until May 1st, this year—I am not talking about anything after May 1st, this year—what time did you report at the mine for work?

A. From ten minutes till six until six o'clock.

Q. Now, when you reported for work where did you report?

A. I reported at the tally house.

Q. And did you turn in anything at the tally house or get anything at the tally house when you reported for work at ten minutes till six or up until six o'clock?

A. I turned in something at the tally house and got something at the tally house.

Q. All right, what did you turn in there?

A. I turned in a brass check.

Q. And did that have your number on it?

A. Yes, sir.

Q. And was that something that you had bought or something that somebody had given you?

A. Well, they gave me that check-in number when I was first employed with the Tennessee Company.

Q. And did you have any other kind of number with the Tennessee Company besides that check-in number?

A. Yes, sir, I had a badge number.

Q. Well, what was the badge number used for, Asberry?

A. A badge number was used, what I would say for the outside; that is, when you went to get your pay you had to have this badge on or show it to the paymaster.

Q. And when you reported for work you had to turn in your brass check?

A. That is correct.

Q. Now, you said you turned in something when you reported for work and you got something. What was it you got?

A. I got some carbide.

Q. And how much of that would you get?

A. I just would get a can.

Q. Did you always pay the same price for this can of carbide?

A. No, sir, it varies.

Q. Well, is there one price for the even can and another price for the odd can, or is it the other way?

A. They just cut you so much this time and so much the next time. That is what I mean by it varies.

Q. That is what I am getting at. You understood my question all right. What did they cut you one time for a can?

A. I want to answer it this way: I don't know what they cut for a can. They cut by the estimate, by the two weeks.

Q. Now, how much did they cut for one two weeks and how much for another two weeks?

A. Some time it runs as high as probably thirty-five or forty or maybe more and then it comes down maybe about twenty cents, as low as twenty cents.

Q. Would that happen, that variation, when you had done the same amount of work and used the same amount of carbide?

A. Yes, sir.

Q. Well, after you had got your carbide then where would you go?

A. I would just maybe walk a little further out on the platform there and get ready to catch the skip.

Q. Now, who was your section foreman or head miner during these three years you have been mucking there that I have asked about.

A. Mr. C. C. Hammett.

Q. When you got there from ten minutes to six on up until six did you hand your brass check over to Mr. Hammett or did you hand it into the window yourself?

A. Sometime I handed it to Mr. Hammett and sometime I put it into the tally house window.

Q. Now, did you have a regular skip which you caught to go in, any regular man trip?

A. For a long period of time I caught the first man trip down.

Q. I am talking about in the past three years, since October, '38.

A. From October, '38?

Q. Yes.

A. Until along about May, '40, I caught the first drag down each shift I worked.

Q. Well, did you just make up your mind to catch the first drag or did somebody tell you to catch the first drag?

A. My head miner told me to catch the first drag, in order that I could go and get the mule, and have the mule there by the time the other men went to work.

Q. Now, just what time did the first drag run?

A. The first drag usually ran around six o'clock.

Q. Now, was that drag a drag in which only two or three men rode, or a greater number rode?

A. A greater number rode.

Q. Would you say it was a crowded drag ordinarily when you went down?

A. Yes, sir.

Q. Did you ever get mashed in it?

A. Oh, yes, sir.

Q. How many men ordinarily would you say went down on that first drag?

A. The first drag, I would say, sometimes around thirty-five to thirty-six, along in there.

Q. Well, now, did they have any men on the outside of the drag riding down at the same time at that time at that mine?

A. No, sir.

Q. Did they have any on this skip, did they have a basket or anything in front or behind where they put tools at this mine?

A. No, sir.

Q. You didn't have a skip tender riding in a chair on the front or behind on the way down?

A. They had a chair there for somebody to ride there for a skip going down, but there was no basket for any tools that I know anything about.

Q. Did they have a bail on that skip on the man trip?

A. Yes, sir, they have a bail on that skip.

Q. Well, what was that bail, what was it made out of?

A. The bail was made out of the same material that the skip is made out of to my best judgment.

Q. It is made out of metal?

A. Yes, sir.

Q. Well, what was the bail used for during those three years that you were riding?

A. Now, the bail on that skip—the skip had a swing door, you might say. That bail kept it closed; and when it went into the tipple that bail went up and the door opened, but when the man loading drag was loaded there was men that rode the bail all the time; two or three rode the bail all the time.

Q. Did you ever see any hangers or wedges or drill steel in the bail as the man trip went down or as it came out?

A. No, sir, I did not.

Q. Did you, while you were on top and before you caught the man trip, ever get any orders from your head miner as to what you should do or where you would go?

A. I did.

Q. Did you ever have the section foreman—I mean the mine foreman or the assistant mine foreman—give you orders as to where you would go or what you would do there before you caught the first man trip?

A. No, sir, the mine foreman or the assistant didn't.

Q. Didn't give you orders?

A. No, sir.

Q. Well, when you would get there ten minutes to six or six o'clock, would you see the mine foreman or assistant mine foreman around there?

A. Yes, sir.

Q. Now, who, if anybody decided when this man skip would go down, the first skip would go down, who decided when they had a load and were ready to go?

A. Why it was some time the man outside, when it was filled up and nobody else could get in it, but there was a skip tender there to slack it off.

Q. Did you have any tools to handle yourself during those two years that you were taking care of the mule; would you handle any tools going in or coming out of the mine?

A. No, sir, I didn't.

Q. Then after you no longer had to get there and take the first trip to look after the mule, did you have any work to do which required you to take any kind of tools or implements into the mine other than your carbide lamp?

A. Not into the mine.

Q. Did you in your work have anything to pick up on the way from the man unloading station to your mechanical loader?

A. I did.

Q. Well, now, what did you have to pick up and where did you pick it up?

A. What I had to pick up, some time bars, hangers, wedges, jackhammer steel and sometimes oil.

Q. And sometimes oil?

A. Oil, yes, sir.

Q. Where would you pick up the bars, wedges and jackhammer steel?

A. At the tool house.

Q. About how far was that from the man unloading station?

A. The tool house from the man loading station is about nine hundred—about six hundred feet, I guess, five or six hundred feet.

Q. And how far, during those three years that I have asked about, was it from the man unloading station to your mechanical loader?

A. Now, it varied.

Q. Do you remember the headings that you worked in?

A. I do.

Q. All right, now, name the headings you worked in and then we can look at the map and see something about how far they were.

A. I worked from 63 left and 65 left to the first northeast haul.

Q. Now, which one of those was the farthest away from the man unloading station?

A. The northeast haul?

Q. How far was that from the man unloading station?

A. To the working face it is around four thousand feet, between thirty-five hundred and four thousand feet.

Q. And the shortest one that you worked at in those three years, in your judgment, about how far was the walking distance from the man unloading station to your mechanical loader?

A. Well, I imagine that closest one was close to about —was about two thousand feet, I imagine.

Q. Well, when you carried these hangers or wedges or jackhammer steel did you have any kind of box or sack to carry them in, or did you just carry them in your arms or in your hands?

A. We carried them in our hands.

Q Did you on your way out, after you had finished with your mechanical loader, carry anything out with you other than your carbide lamp?

A. No, sir, I did not.

Q. Now, when you had finished working with the mechanical loader and had walked back to the man loading station, did you have any regular man trip assigned to you, during those three years, for you to catch in going out of the mine?

A. No, sir.

Q. Did you know from day to day what man loading trip you would ride out of the mine?

A. For a long period of time I could just about tell. I couldn't exactly tell but I could just about tell.

Q. Well, for that long period which man loading trip did you catch?

A. The last one.

Q. And what time of day would you catch your last one?

A. It would—to my best judgment it would be about 3:40 or 3:45 sometimes.

Q. Then when you got up to the top and got off the man skip or got out of it where would you go to check out?

A. I would go to the tally house.

Q. And what would happen there when you checked out, what would you get there?

A. I would get my brass check back again then.

Q. Could you go in that mine during any part of that three years without having turned in that brass check?

A. Well, I will have to answer that this way: You could go down there without it but you would have to call back, just like you would forget it.

Q. Yes.

A. Men have forgot their check. I say I have forgot to check.

Q. Then what would happen when you forgot your check, how would you get in?

A. Well, I went on down but I took the 'phone and called back.

Q. And reported to the tally house that you had passed by without putting in a check?

A. Yes, sir.

Q. Did that happen very often?

A. No, sir.

Q. Did they discipline you for that?

A. No, sir.

Q. Now, suppose you lost your brass check did they give you another one, or did you have to buy another one?

A. They would give you another one.

Q. Did they change your number if your brass check was lost, or give you another one of the same number?

A. Another one with the same number?

Q. Now, during this period that you have been working out there with the Tennessee Company have the colored men been allowed to join unions?

Mr. Burr:

We note a special objection to that, if Your Honor pleases.

A. Ask that again, please.

Mr. Burr:

I didn't hear Your Honor rule.

The Court:

Overruled.

Mr. Burr:

We take an exception.

A. What, please?

Q. I say, during the time that you have been working out there have the colored men been allowed to join

unions, I mean the International Union of Mine, Mill and Smelter Workers?

A. Yes, sir.

Q. Are you a member of the union of the International Union of Mine, Mill and Smelter Workers?

A. Yes, sir.

Q. How long have you been a member of that union, Asberry?

A. Ever since it was organized, in '33.

Q. And what is the number of the union you belong to?

A. Muscoda 123.

Q. Muscoda?

A. 123.

Q. Muscoda 123?

A. Yes, sir.

Q. And you work at Ishkooda, don't you?

A. Yes, sir.

Q. And the name of the union at Ishkooda is Muscoda 123?

A. No, sir, it is the Ishkooda local at Ishkooda and Muscoda 123 is at Muscoda.

Q. Where is your membership?

A. At Muscoda.

Q. And that is the one you have been a member of constantly since 1933?

A. Yes, sir, all the time since '33.

Q. Now, have you ever been an officer of that union?

A. Yes, sir.

Q. What different jobs have you held in the union?

A. I have been on local grievance committees and relief committees and Recording Secretary and now Vice President.

Q. As a member of the grievance committee what officials or representatives of the company would you meet with to take up small grievances?

A. The local superintendent.

Q. And who was the local superintendent that you took that up with?

A. Mr. Ewing Carter.

Q. Is that still the man that you take up grievances with, if you have any small grievances?

A. Yes, sir.

Q. Now, is there anybody else on the committee of your union, on the grievance committee besides you?

A. Yes, sir.

Q. Who are some of the other men that have been on your grievance committee?

A. May I ask this question?

Q. Sure.

A. You are talking about all, from the various times?

Q. No, just the last three years.

A. Just the last three years?

Q. Yes, to the present time.

A. On the local grievance committee at one time, Mr. Pete Dulaney was on there and Mr. R. H. Martin and Mr. Bob Clifton and Walter Ward, Ewing Lanier, and maybe one or two more. Now, I don't mean that these served at every meeting but I mean that some time they were on there and some time they were not.

Q. That was the local grievance committee?

A. Yes, sir.

Q. What was the name of the other committee that you served on?

A. Well, I served on the general committee too, the general committee on grievances, but that has been since '38.

Q. You mean before '38 or since?

A. Since.

Q. What is the general grievance committee?

A. The general grievance committee is a committee that takes things higher; if your have done reached no agreement with the local committee then it goes on up

to the general committee, then it goes on up to this highest authority.

Q. All right. Now, were you in the 1936 strike; did you go out on a strike?

A. I did.

Q. And when the strike ended and the men were put back to work did you go back to work?

A. No, sir.

Q. How long was it after that 1936 strike ended before the company put you back to work?

A. October 10, 1938.

Q. Were you one of the undesirables?

A. Yes, sir, that is what they say.

Q. During that two years that you were not at work for the Tennessee Company did you have a job somewhere else?

A. Yes, sir.

Q. Now, then, when you had grievances that were not settled with the local grievance committee and you took them up with higher authority who did you take them up with?

A. First to Mr. Ball.

Q. And did you ever sit in meetings with Mr. Ball?

A. Yes, sir.

Q. Do you remember what year it was that you sat in the first meeting with Mr. Ball?

A. No, sir, I don't know the year exactly but it was since '38.

Q. Now, in those meetings did the union men have a stenographer or did the company have a stenographer that took down what was said?

A. The company had a stenographer and the union didn't have a stenographer.

Q. Did the unions ever ask to be allowed to have their stenographer there in any meeting while you were there?

A. No, sir, not at a meeting whilst I was present.

Q. And then after the meetings were over were you as a committeeman furnished with the minutes of the meeting?

A. Yes, sir, I would get a copy of the minutes.

Q. All right, did you after getting these copies, did you all ever, or you or any other member of the committee ever make complaint that things had been left out of the minutes or the minutes were not complete?

A. Yes, sir, that complaint has been made.

Q. Well, now, did those minutes that were handed to you always show everything that had been talked about during the meeting?

A. No, sir.

Q. Tell whether or not there was every any occasion in those meetings where anybody would say, "Off the record", did you ever hear that phrase in those meetings?

A. Yes, sir.

Q. And when they would say, "Off the record", did the stenographer stop writing or did he keep right on writing?

A. He stopped.

Q. Who have you heard tell the stenographer in those meetings, "Off the record"?

A. I have heard Mr. Carter and Mr. Ball say, "Off the record."

Q. Was that a frequent or an infrequent occurrence?

A. I would say frequent.

Q. Did you keep a set of all those minutes that were written up by the company's stenographer and turned over to you, did you keep a set of them?

A. No, sir, I wouldn't—for a period of time I would have them to look over and make my report back to the body. I would look over them. But here lately I did get a copy of those minutes.

Q. And keep them now?

A. And keep them now.

Q. How long ago was it that you started keeping your copies?

A. Well, it hasn't been very long. It has been less than a year.

Q. Now, in the meetings with Mr. Ball and Mr. Carter and the members of this higher—this committee, general committee; I believe you call it—

A. Yes, sir.

Q. Did you ever have any discussions about the rates of pay the men were getting?

A. Yes, sir.

Q. Did you have any discussion about the hours of work?

A. No, sir.

Q. Was there any discussion at any meeting that you attended when the question of pay for the time spent between the tally house and the face and the time spent between the face and the tally house was taken up?

A. No, sir, I don't remember a meeting that I was in at that time.

Q. You don't remember that ever being discussed at any meeting you were in?

A. No, sir, not discussed at no meeting that I was present.

Q. When the strike of 1936 came what mine were you working at?

A. When the strike of 1936, I was at No. 4 mine, I think.

Q. And then when they put you back to work two years later did they put you back there or did they switch you to Ishkooda?

A. They switched me to Ishkooda.

Mr. Harris:

That is all. You can take him.

Cross Examination.

(By Mr. Burr):

Q. Asberry, I understood you to say you had been working in the ore mines about seventeen years?

A. That is right.

Mr. Harris:

There is one thing I forgot, Mr. Burr, if I may bring it out.

Mr. Burr:

All right.

Direct Examination (Continued).

(By Mr. Harris):

Q. During the period just before the incentive plan was handed to your union, how many members did your union have?

A. We had pretty close—it was between eight and nine hundred. I will say. We had a good membership at that time.

Q. Then after the strike in 1936 and before the end of 1936, say along in December, '36, how many members did your union have?

A. Along in December of 1936 I imagine we had about ten working members.

Q. And how about in 1937?

A. 1937, for a period of time we had about five.

Q. What do you mean by working members?

A. Members that were working for the company over there at the mine or on the outside.

Q. Then after the Fair Labor Standards Act was passed in 1938 did your membership go back up?

Mr. Burr:

We object to the form of that question. I don't suppose it was contended that the Fair Labor Standards Act had anything to do with the increase, of course.

The Court:

Well, ask him when it went up.

Mr. Harris:

I will change it, Judge.

Q. Did your membership go up in 1938 or in 1939?

A. It began to increase in 1938.

Q. Did it begin to increase before the Chicago settlement or after the Chicago settlement?

A. After the Chicago settlement.

Q. All right. Then after the Chicago settlement did you have any company union out there any more?

A. Yes, sir.

Q. Have you got a company union out there now?

A. Not on the job.

Q. Then in 1939 did the membership of the union increase or stay like it was in '38?

A. It increased each year.

Q. Increased each year since 1938?

A. Yes, sir.

Mr. Harris:

You can take him.

Cross Examination (Resumed).

(By Mr. Burr):

Q. How many members have you got now, Asberry?

A. Oh, we have got around a thousand.

Q. Around a thousand now. That is in your local at Muscoda you are talking about?

A. Yes, sir.

Q. Now, you say it began to increase after the settlement was made in Chicago?

A. That is right.

Q. Since then it has kept increasing until you claim now you have got a thousand at Muscoda?

A. Yes, sir.

Q. Did you go to Chicago; were you one of the ones that went up there?

A. No, sir, I didn't go.

Q. Did you have anything to do with negotiating that settlement on that trip, did you have anything to do with that negotiation?

A. No, sir.

Q. But you were vice president of the local when they came back and reported and got your consent to the contract, that that settlement had been made? They submitted it to you, didn't they?

A. I don't know exactly whether I was vice president, but I was there.

Q. You say it was submitted?

A. Yes, sir.

Q. To the local before it was executed?

A. No, sir.

Q. Before it was signed?

A. No, sir.

Q. Wasn't it?

A. No, sir.

Q. You mean your representatives just went up to Chicago and made an agreement and signed it and didn't come back here and submit it to your local?

A. I mean they gave it to the local when they came back.

Q. Already signed?

A. Already signed.

Mr. Harris:

Let him finish.

Mr. Burr:

I thought he had finished.

A. (Continuing.) It was already signed.

Q. It was already signed. And what else happened?

A. Let me go back a little further.

Q. No, I want you to stay right where you are.

Mr. Harris:

Well, I object to him stopping him. He has got a right to answer.

Mr. Burr:

Read the question.

(Question read by the reporter.)

Mr. Burr:

Now, go back further and read the questions and his answers.

(The four preceding questions and answers of the witness were read by the reporter.)

Q. And what else happened? What else happened after the contract was signed and they came back from Chicago?

A. After the contract was signed in Chicago why we accepted it and we went back to work.

Q. Well, do you mean that you agreed to it after they had signed it? Is that what you mean by you had accepted it?

A. I mean that—I mean we went by it.

Q. How?

A. I mean we went by it.

Q. You went by it?

A. Yes, sir.

Q. Well, now, did or did not the officers of the union that went to Chicago, when they came back did they call a meeting of your local and submit to you a contract which had not been signed and ask for your authority to sign it; did that happen or not?

A. Ask that question again.

Mr. Burr:

Read the question.

Q. (Question read.)

A. It didn't happen. It did not happen as to the signature. They brought—it did happen that they brought one back but it was already signed.

The Court:

That is what you answered in the beginning, wasn't it?

The Witness:

Yes, sir.

Q. And you went back to work under that contract?

A. Yes, sir.

Q. Was it read to you?

A. Yes, sir, it was read.

Q. Item by item and section by section?

A. I wasn't following him but he said he read all of it. To my best judgment he read it.

Q. He read it?

A. Yes, sir.

Q. And you worked under that contract from that time until the next one was signed?

A. Yes, sir.

Q. And when the next one was signed you worked under that one, is that right?

A. There is not no next one. There is not no other one, just that one and no more.

Q. You are still working under the last one?

A. Yes, sir.

Q. Of course, you don't know what happened; you didn't go to Chicago, I believe you said?

A. No, sir, I didn't go to Chicago.

Q. Now, when you were working for the Republic Company—that is where I believe you said you started to work—you were what you call a fist loader or a hand loader?

A. Yes, sir.

Q. That is, you didn't use a mechanical loader, you used a pick and shovel?

A. That is right.

Q. That is right, and then you stayed there a very short time. How long a time did you stay at Republic? You said a short time.

A. Well, I don't know exactly. It was a short time.

Q. How long? Was it a year or a month?

A. I imagine it was somewhere around three months.

Q. Somewhere around three months?

A. Somewhere along in there.

Q. Where was it, at Raimund or Spaulding?

A. Raimund.

Q. Then you say you worked at Sloss for about a year?

A. Not after I left Raimund.

Q. Then where did you go after you left Raimund?

A. I went back to the T. C. I. mine.

Q. Is the T. C. I the first company you ever worked for, or the Republic?

A. The T. C. I.

Q. You worked for the T. C. I. and then went to the Republic?

A. Yes, sir.

Q. What did you do, your first work with the T. C. I. before you went to the Republic as a mucker?

A. I was a mule boy.

Q. A mule boy?

A. Yes, sir.

Q. Then when you came back after working about a year at the Republic you went back to the T. C. I.?

A. I didn't work that long.

Q. Well, a shorter time than you worked at the T. C. I.?

A. Yes, sir.

Q. What did you do at this time with the T. C. I.?

A. When I came back at that time I was a mucker.

Q. A mucker over at the T. C. I. at that time?

A. Yes, sir.

Q. Then you went back to the Sloss; is that the way it was?

A. Yes, sir, after I pulled off in '36.

Q. Then you went to the Sloss and worked about a year?

A. Yes, sir.

Q. Then you came back after the settlement was made in '38 on October 10th, you went back to work over in Ishkooda?

A. Yes, sir.

Q. At No. 11 mine?

A. Yes, sir.

Q. And you have been there since?

A. Yes, sir.

Q. Now, how long have you been working, Asberry, with a mechanical loader?

A. All of my experience?

Q. No, no, since October 10, '38?

A. Since October 10th I worked right around it until possibly some time in June of 1940. What I mean I worked around I was one of the men in there to load.

Q. That is what I mean. I am trying to find out how much of the time have you worked with the mule since you went back to work and how much with the mechanical loader.

A. Well, I worked with the mule from the first job I got until some time in May, 1940.

Q. What did you use the mule for, in hauling ore or what?

A. We used the mule to pull the empty cars to the heading.

Q. And at that time you were working around the mechanical loader also, is that right?

A. Yes, sir.

Q. Do you know how many mules they had in that particular mine at that time?

A. No, sir, I don't know.

Q. Had a very few, didn't they; most everything was on a straight mechanical loading system?

A. They had eight or ten.

Q. Eight or ten?

A. Maybe somewhere along in there, maybe up. It wasn't none under eight at that time, I don't think.

Q. Did you ever quit using the mule?

A. Yes, sir.

Q. Now, when did you go on a straight mechanical loading system?

A. Some time in May of 1940.

Q. Now, your head miner was Mr. C. C. Hammett?

A. Yes, sir.

Q. He was your boss?

A. Yes, sir.

Q. Has he been your boss ever since then?

A. Yes, sir.

Q. Is he your boss now?

A. Yes, sir.

Q. When you reported, when you came to the portal of the mine there, you deposited your check or som-

times gave it to Mr. Hammett, is that what I understood you to say?

A. Yes, sir, sometimes I put it in the window and sometimes I gave it to Mr. Hammett.

Q. Then would you go down in the mine before him or after him usually, ordinarily?

A. A period of time I went ahead of him always.

Q. That was the time you went to get the mule, as I understand?

A. That is right.

Q. I am asking about the time after you quit going to get the mule, would you go in ahead of him or behind him, sometimes one and sometimes the other?

A. Sometimes I would go in behind him and sometimes I would go in ahead of him.

Q. Would you pick the drag that you would ride on during that period of time yourself, get the one that you wanted to ride on?

A. Just during that period of time.

Q. That is the period of time I am asking you about. I don't care anything about the mule time. Just remember I am asking you about the mechanical loader time. During that time you would ride any drag you wanted to, or not?

A. Yes, sir, I rode the one I could get.

Q. Well, would you get there at six o'clock during that period of time or get there at 6:10 or 6:15, or what time would you get there?

A. Well, I would sometimes get there around six o'clock or 6:10.

Q. Well, did you get there after 6:10 during that period of time any, or not?

A. No, sir, I don't think I did.

Q. You would say between 6:00 and 6:10?

A. Yes, sir.

Q. Then if a drag wasn't loaded you would catch the first drag after you got there?

A. Yes, sir, sometimes.

Q. Well, if you didn't catch the first load would you wait for the next load, or how did you handle that?

A. Yes, sir, if I didn't catch the one that went down that time I would catch the next one.

Q. And then when you got to the bottom how would you go to your working place, walk to it?

A. Yes, sir, I would walk pretty close to the working face.

Q. You wouldn't go in there until the head miner had made it safe?

A. Well, yes, sir. I went in there before it was made safe.

Q. Would you help make it safe; would they call on you sometimes to help make it safe?

A. Yes, sir.

Q. That is when you would go in there before it was made safe, when the head miner would instruct you to help him?

A. Yes, sir, in picking up something I would go right on behind him with some of the tools that they had to use.

Q. I see. Now, the tools that you said you took up there that you got at the tool house, you said that you picked up sometimes a hammer, jackhammer or hammer steel and wedges. Did you make anything else?

A. I didn't name the jackhammer.

Q. You didn't name the jackhammer. What did you name that you picked up? What did you pick up sometimes on your way to work?

A. I picked up bars.

Q. That is a quarrying bar?

A. Yes, sir.

Q. All right, what else?

A. I picked up hangers.

Q. All right, what else?

A. I picked up jackhammer steel.

Q. And what else?

A. I picked up wedges.

Q. Anything else?

A. I picked up oil.

Q. You didn't get the oil at the tool house, did you?

A. You see it is just grease—it is a little further than the tool house.

Q. Let's stay with the tool house place.

A. All right.

Q. Is there anything else you ever picked up from the tool house?

A. Yes, sir, I have picked up the tripod leg from the tool house.

Q. When did you carry the tripod leg from the tool house?

A. I carried it on an occasion when the drill man left word one had been broken and to carry one down.

Q. How often did that happen?

A. It didn't happen often.

Q. Well, about how often?

A. Well, it happened once since we have been down in the bottom. I imagine that has been once in a year.

Q. It happened once since you have been down in the bottom?

A. That is right.

Q. And who did you say told you to pick up that tripod leg?

A. My head miner told me to get it.

Q. Your head miner told you to get it?

A. That is right.

Q. Now, when you would pick up—your head miner would tell you—you were under his orders directly?

A. Yes, sir.

Q. Well, when you were up in the heading, in the stope, would you run out of wedges or jackhammer steel and the head miner sent you down to get them?

A. No, sir.

Q. Did he send anybody else down to get them?

A. No, sir.

Q. Did he send them to get anything when you were working up there in the heading?

A. Yes, sir.

Q. What did he send you to get?

A. I went back and got a tripod leg.

Q. Is that the time you got the tripod leg?

A. No, sir, this is a different time.

Q. A different time. All right.

A. I have got bolts that goes in the tripod leg, water, fittings and things of that type.

Q. In other words, when he told you to go back and get anything you went back and got it, of course?

A. Yes, sir.

Q. And those are some of the things he told you to go back and get?

A. Yes, sir.

Q. You tried to keep a supply of hammer steel and wedges on hand in the working place all the time, didn't you?

Mr. Harris:

We object. He can't know what the head miner tried to keep.

Mr. Burr:

I asked the witness, who was there.

The Court:

Do you know?

A. Ask that question again, please.

Q. You generally kept a supply of these tools as far as you could up in the working place, didn't you?

A. Yes, sir.

Q. Now, when you picked up the articles that you have mentioned, I will say the quarrying bar and the wedges and the hammer steel, would you get all of those on the same day or different days?

A. Different days.

Q. Every day you went up by the tool house you wouldn't pick up a quarrying bar, would you?

A. No, sir, not every day.

Q. You wouldn't pick up jackhammer steel every day?

A. No, sir.

Q. And you wouldn't pick up wedges every day?

A. No, sir.

Q. And sometimes when you have picked up these articles other members of the crew didn't pick them up?

A. That is right.

Q. And the head miner never did pick them up at all, did he?

A. Yes, sir.

Q. The head miner picked them up, your head miner?

A. Yes, sir.

Q. Didn't he generally tell you all to stop and pick them up?

A. Sir?

Q. Didn't he generally tell you all to stop and pick them up?

A. Oh, yes, sir, he told us to stop.

Q. But he is the one that told you to stop and pick them up?

A. That is right.

Q. Now, by stopping and picking them up as you went up to your working place that saved you, if you got short during your working hours, from coming back down there and getting them and carrying them back down to the working place, that is right, isn't it?

A. That is right.

Q. Asberry, I don't exactly understand your union work as a member of the committee. Do you belong to the Muscoda union but you work at Ishkooda?

A. That is right.

Q. You have kept your membership over there at Muscoda all the time?

A. That is right.

Q. And this grievance committee that you have served on, is that the Muscoda committee that you have served on?

A. The local committee.

Q. The local committee, that is what I am talking about, the local committee at Muscoda.

A. That is right.

Q. And that is the committee that handles with Mr. Carter, the superintendent at Muscoda, grievances, requests or complaints of the men that work at Muscoda?

A. That is right.

Q. In other words, your committee didn't have anything at all to do with the Ishkooda operations?

A. No, sir.

Q. But over in Ishkooda where you work you have a grievance committee that handles with Mr. Cameron grievances, requests and suggestions on the Ishkooda work and union, is that right?

A. That is right.

Q. On that committee has been Mr. Patterson; has he been the man over there, Mr. Sizemore or Mr. McBrayer, are they the ones that have been on the committee at Ishkooda?

A. I couldn't name the Isnkooda committee.

Q. You couldn't name the committee?

A. I wouldn't try, no, sir.

Q. Do you know any of them?

A. No, sir, I don't know exactly.

Q. Don't know any of them at all, but your grievance experience has been over with Mr. Carter?

A. That is right.

Q. At Muscoda?

A. That is right.

Q. Now, this general committee—let me see if I understand that—is the committee that represents all the mines?

A. Yes, sir.

Q. About how long have you been on that committee?

A. I haven't been on that committee very long.

Q. About how long?

A. I have been on there since we went back to work in '38.

Q. Now, who else is on that general committee that you are a member of?

A. The presidents, vice presidents and financial secretaries.

Q. They are all ex officio members of the general committee, then?

A. Yes, sir.

Q. That is who they are, and they meet with Mr. Ball, do they?

A. Yes, sir.

Q. And when you have those meetings do the local superintendents meet with you too?

A. Yes, sir, sometimes, most times.

Q. Then you said you go to the highest authority if you can't get matters straightened out with Mr. Ball satisfactorily, you go on up to the president of the company?

A. That is my understanding. I have never been any further than Mr. Kelly.

Q. You haven't gotten any further than Mr. Ball?

A. Mr. Kelly.

Q. Mr. Kelly. He is the man that succeeded Mr Vance in charge of the Industrial Relations Department?

A. That is right.

Q. So the highest authority that you have been to is Mr. Kelly of the Industrial Relations Department?

A. Yes, sir.

Q. But you have been that high with the general committee?

A. You say I have been that high?

Q. Yes.

A. Yes, sir.

Q. All right. Now, I understood you to say that sometimes complaints had been made that something had been left out of the minutes. Now, were you talking about the minutes of the local Muscoda committee that you belonged to, or were you talking about the minutes of the general committee that you belonged to?

A. I am talking about both.

Q. All right. Let's take up the general committee first. Well, I believe you told Mr. Harris that in none of the meetings, either with the general or the local committee, the portal to portal matter never was discussed at all, according to your recollection?

A. No, sir, the portal to portal wasn't discussed in either one of these meetings.

Q. That is what I understood you to say, when he asked you what was left out. I believe you also told him that at none of these meetings was there ever any discussion about the hours of work. There was about the rates of pay but not about the hours of work. Is that what you told Mr. Harris?

A. When it came down to drawing up this last contract we didn't discuss hours of work.

Q. Well, did you discuss hours of work—you didn't discuss hours of work when you drew up the Chicago contract because that came back here already signed, wasn't it, before you knew anything about it?

A. I will answer it came back signed but I won't say it was before I knew anything about it.

Q. Well, you didn't discuss it, did you, in any meeting because that was done in Chicago, wasn't it?

A. I didn't hear anybody discuss it.

Q. You didn't hear anybody discuss it in any meetings with Mr. Kelly or Mr. Vance or Mr. Ball?

A. I wasn't in any of those meetings, so I didn't hear it.

Q. You didn't hear that?

A. No, sir.

Mr. Burr:

I think that is all I want to ask him.

The Court:

Anything further?

Re-Direct Examination.

(By Mr. Harris):

Q. Asberry, do you recall whether or not there were two different papers brought back from Chicago, one a contract and the other a stipulation, about this company union?

A. Yes, sir.

Q. Now, are you clear in your own mind as to whether it was the stipulation that was brought back from Chicago that was signed, or whether it was the contract that was brought back signed?

A. It is my best understanding the company presented one agreement and the men refused that; asked them could they do no better, then authority was given a committee to go up there and get the best they could get, and sign it.

Q. And did that committee come back with a stipulation about the company union and a contract?

A. They did.

Q. Now, what does one of those tripod legs weigh that you carried?

A. Let's see. I have a very slight estimation of that. I don't hardly know, but it is something about that long (indicating) and it has got a small hole in it, and it is made out of what I would call iron.

The Court:

Well, tell him. He asked you what it weighed. What is your best judgment?

The Witness:

Well, I guess it would weigh around twenty pounds.

Mr. Harris:

I think that is all.

Re-Cross Examination.

(By Mr. Burr):

Q. Just one question. You said you got the tripod leg once when the head miner sent you back from the heading, one time to get a tripod leg that you remembered, and you went and got it and brought it back, and then you said on another occasion he told you to pick up one at the tool house. Was it the same weight leg on both occasions, would it weigh about the same thing, about the same kind of thing?

A. Yes, sir, it was the same tripod leg.

Mr. Burr:

That is all.

Mr. Harris:

That is all I want to ask him.

The Court:

All right, come down.

Mr. Harris:

Now, if the Court pleases, I have some other issues of the Ore Miner, published by the Tennessee Company, which I did not ask any of your witnesses to identify, Mr. Burr, and if you raise that as an objection—

Mr. Burr:

No. I would suggest this, that I never have seen them. If you are going to use any more, give us an opportunity to look at them and probably there will not be any formal objection. I don't mean that any of them are admissible, but I would like to look at them and see whether there are any other objections besides the one I made.

Mr. Harris:

I had intended to use this time to read them to the Court and not put on any other witnesses this afternoon.

Mr. Burr:

All right, if you want to identify them now and we can make our objections later after we have an opportunity to see them.

The Court:

All right, we can do that.

Mr. Burr:

In other words, I don't want to raise any point if they show on their face that it is an issue of the paper, I don't make any point on that at all.

Mr. Harris:

The first one that I identify is the January, 1939, issue of The Ore Miner.

The Clerk:

That will be Defendants' Exhibit 13.

(Thereupon, said January, 1939, issue of The Ore Miner was identified as Defendants' Exhibit 13.)

Mr. Harris:

The December, 1939, issue of The Ore Miner.

The Clerk:

Defendants' Exhibit 14.

(Thereupon, said December, 1939, issue of The Ore Miner was identified as Defendants' Exhibit 14.)

Mr. Harris:

The April, 1939, issue.

The Clerk:

Defendants' Exhibit 15.

(Thereupon, said April, 1939, issue of The Ore Miner was identified as Defendants' Exhibit 15.)

Mr. Harris:

The June, 1939, issue.

The Clerk:

Defendants' Exhibit 16.

(Thereupon, said June, 1939, issue of The Ore Miner was identified as Defendants' Exhibit 16.)

Mr. Harris:

The December, 1938, issue.

The Clerk:

Defendants' Exhibit 17.

Mr. Burr:
What month?

Mr. Harris:
December, 1938. Have I already introduced that? I don't think so. Maybe that is the one. Maybe that is a duplication. I don't want any duplications. Will Your Honor indulge us a second?

The Court:
Yes.

Mr. Burr:
If you are getting these others, leave them out overnight so we can check them.

Mr. Harris:
Yes. Now, be sure to leave our little tabs because it will show what has been introduced.

Mr. Burr:
Yes, I won't bother them at all.

The Court:
Now, you haven't offered that last one?

Mr. Harris:
No, sir, because I introduced December, '38, yesterday, Your Honor.

The Court:
I mean it wasn't taken down just now?

Mr. Harris:
No, sir.

Mr. Burr:

Are you offering the whole issue or the numbers, particular numbers?

Mr. Harris:

I offer the numbers.

Mr. Burr:

Where you have got it, call it.

Mr. Harris:

And on the back you will find a little tab, showing what the article is and what the information is.

Mr. Burr:

And then we can check then.

Mr. Harris:

And then the next one is November, 1938, issue.

The Clerk:

Defendants' Exhibit 17.

(Thereupon, said November, 1938, number of The Ore Miner was identified as Defendants' Exhibit 17.)

Mr. Harris:

Now, if the Court pleases, I also have a matter that I want to take up at this time. We had a subpoena issued. I beg your pardon. I want to introduce—I mean mark for identification also the May, 1939, issue of The Ore Miner.

The Clerk:

That will be Defendants' Exhibit 18.

(Thereupon, said May, 1939, number of The Ore Miner was identified as Defendants' Exhibit 18.)

The Court:
All right.

Mr. Harris:
Each has tabs, stickers, on there. You gentlemen can check those overnight if you will.

I had a subpoena issued at near the close of the plaintiffs' case, that is, as to certain documents and information which the evidence indicated was in the possession of the plaintiffs. I had a subpoena issued for Mr. Bail as an official of the Tennessee Company and for the Tennessee Company to produce certain documents. Mr. Burr handed me some objections.

Mr. Burr:
Motions, it is, under the rule, objections to the issuance of the subpoena.

Mr. Harris:
I don't know whether Your Honor would want to take that up now or take it up in the morning.

The Court:
We will take it up now.

Mr. Harris:
Since he has the objections.

Mr. Burr:
Judge, you can see what the general objections are. Since we filed those objections that subpoena was served, I think, day before yesterday and was made returnable the next day. It calls for a good deal of the matters

that we are producing in the course of the trial. For instance, we produced today all of the minutes of the Ishkooda Division. When we get to Wenonah I expect to produce all of those. When we get to Muscoda I expect to produce all of those.

The Court:
What is he calling for?

Mr. Burr:
He is calling for stuff—let's see what he is calling for: Maps with figures indicating the progress made in each heading of the iron ore mines of the Tennessee Coal, Iron and Railroad Company since 1936. Now, Your Honor will remember—while I don't think there is any obligation on us to produce that sort of map—we will have to make it up—we have already produced and is already in evidence maps showing in different ones the progress each year and in every mine.

The Court:
I think that is all in evidence.

Mr. Burr:
Yes, sir. The next is statistics showing the change in the rates of pay of the men working in the iron ore mines of the Tennessee Coal, Iron and Railroad Company, through the years since it has been in operation. Well, that would be calling for us to go back and get statistics for probably fifty years, that I can't see possibly could have any bearing on this case.

The Court:
I think that goes back too remote.

Mr. Harris:
Where is the subpoena?

Mr. Burr:

I am reading from it now. The next is all proposals, agreements, contracts, and requests submitted to the Tennessee Coal, Iron and Railroad Company in writing by your ore mine employees or by any representatives of said employees, relating to terms of employment, hours and working conditions and copies of all your replies thereto between January 1, 1933, and the date hereof. I think all have been submitted that we have got. I tried to get all of them.

The Court:

I remember you tried to get them.

Mr. Burr:

And that has all been offered in evidence. The next is all records, minutes, and correspondence recording or relating to conferences and meetings with your ore mine employees or with any representatives of said employees at which there was mentioned or discussed payment for any part of the time spent daily by said employees prior to reaching or after leaving the face. Well, we have produced all I know anything about. If there are any more I will try to find them.

Mr. Harris:

Which number are you reading?

Mr. Burr:

No. 4. I don't suppose Your Honor wants to accept the evidence—

Mr. Harris:

We are going too fast. You say you don't suppose Your Honor wants to do something. I don't know what the ruling is or anything else.

Mr. Burr:

Well, you have asked me to produce all records, minutes, and correspondence recording or relating to conferences and meetings with your ore mine employees or with any representatives of said employees at which there was mentioned or discussed payment for any part of the time spent daily by said employees prior to reaching or after leaving the face.

Mr. Harris:

I say that we are entitled to those.

Mr. Burr:

I say we have produced all of those that we know anything about.

Mr. Harris:

I say that I have subpoenaed Mr. Ball to produce all that he has.

Mr. Burr:

He has produced all that he knows anything about. Mr. Ball, do you have any others?

Mr. Ball:

No, sir, that is all I remember.

The Court:

Well, that answers it.

Mr. Harris:

Of course, that answers it.

Mr. Burr:

Well, I want to make that with this qualification: Mr. Ball says it is all he can remember. I am going to have to make a thorough search.

Mr. Harris:

I gave you a complete list.

Mr. Burr:

Well, he furnished the minutes and I checked them against mine. That is all past.

The Court:

That is what they are now producing.

Mr. Burr:

I shouldn't be required to do any more than I have done. Now, 5 is: "Records for all your ore mine employees of total ore production for the following periods: (a) the year 1923, (b) the year 1933, (c) the year 1940, and (d) January 1, 1941, to date, by month; all tipple and other tonnage records of production of ore in your mines for each year and each month between October 24, 1938, and the date hereof."

7. "All working diagrams and maps of your red ore mines described in the complaint showing: (a) the ventilation system in the mines; (b) the haulage system in the mines; (c) the locations of present operations at the face, (d) manways, passages and haulageways used by your employees in going to and from the face, giving distances, slopes, gradients, and descriptions of manways and passages."

8. "All records of blast furnace loadings for each year and each month since October 24, 1938."

9. "All production schedules for each year and each month since October 24, 1938."

10. "All studies made by you or on your behalf of the ventilation, air conditions, and the dust counts in your

red ore mines and all analyses of occupational hazards and studies of methods of preventing accidents in your red ore mines since 1925 to date."

Now, if Your Honor will hand me my objections I would like to read them. Of course, Your Honor is familiar with the rule. Have we got a copy of the rule?

The Court:

It is moved to quash it, and the Court is governed by whether the subpoena is unreasonable and oppressive.

Mr. Burr:

"Unreasonable and oppressive or condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable costs of producing the books, papers, or documents."

Now, I might state that this dragnet was served on Mr. Ball one day to produce them in Court the next day. Now, the things that can be produced we have already produced relevant to this case and are producing them as the case proceeds. A lot of these things as shown by the motion are in his custody and he tells me to produce them would probably take clerks and drays, examinations of months and days. I think that sort of subpoena is oppressive.

The Court:

I think so, Mr. Burr.

Mr. Burr:

Now, I will state this: I am willing to produce anything in the world that I can that is reasonable.

The Court:

I want to be reasonable about this too. I don't want to be burdensome about this.

Mr. Harris:

I don't want to be burdensome.

The Court:

Colonel Harris, you didn't prepare this, did you?

Mr. Harris:

Yes, sir, I went over this. It is not the subpoena that had been prepared before the case had been brought. There were twenty-two different items in the subpoena before the case entered the trial. I went over that subpoena and checked with the developments of the evidence that had been produced here as to what I thought was available and that they could produce. For instance, we have maps with figures made—let's take them one by one—maps with figures made indicating progress in headings of the iron ore mines of the Tennessee Coal, Iron & Railroad Company since 1936. I think the gentleman has already furnished that since the subpoena has been served.

The Court:

That has already been done.

Mr. Burr:

Yes, I think we did that voluntarily. I don't think we had to do it. We were not required to do it. It cost us money to do it.

Mr. Harris:

Second: Statistics showing the change in the rates of pay of the men working in the iron ore mines of the Tennessee Coal, Iron & Railroad Company, through the years since it has been in operation. Now, of course, we don't expect the Tennessee Company to hire any auditors to go back and make calculations. If they have those statistics already prepared it would be a very simple matter.

Mr. Burr:

I don't know what statistics you are talking about. I couldn't understand that question. The company was incorporated and been in business almost before I was born.

The Court:

Showing the change in the rates of pay of the men working in the ore mines?

Mr. Burr:

Yes, sir. They have been changed. Statistics—I don't know what sort of statistics he is talking about.

The Court:

I am wondering if the company hasn't got a statement or record showing what they paid throughout certain years.

Mr. Burr:

Well, what relevancy would they have in this case? Why should we be called on to get it up and present it the next day?

The Court:

That is not the question before us.

Mr. Harris:

Talking about the availability.

Mr. Burr:

I don't know what you mean by statistics. If he will tell me in a reasonable length of time he wants to know the changes in wages—we gave them all during this period of time. We started back in '33.

Mr. Harris:

You mean to state to the Court that you have already introduced tabulations showing the rates of pay of every year and of every underground ore miner since 1933?

Mr. Burr:

No, sir, I don't mean to state anything of the sort.

Mr. Harris:

I thought that was what you said.

Mr. Burr:

No, no, I didn't. I said any change in rates of pay where increases were granted.

Mr. Harris:

That is exactly what I asked for, showing the rates of pay.

Mr. Burr:

No, sir. It shows in the contracts.

The Court:

In the iron ore mines of the Tennessee Company?

Mr. Burr:

There are nine separate iron ore mines.

The Court:

You mean the same rate of pay all during the year, isn't it all the same?

Mr. Burr:

Yes, sir, I think it is all here.

The Court:

I don't think we will go back that far.

Mr. Harris:

Such limit as to years as Your Honor thinks is reasonable.

Mr. Burr:

Well, I don't believe we ought to be called on to respond to a subpoena like that. I ask that this subpoena be suppressed and then if he gets out one that is reasonable let's take that up. I have never had one served on me that required us to get out twenty-two things.

The Court:

I will pass on this tomorrow morning.

Mr. Burr:

If he will serve us a reasonable subpoena—

Mr. Harris:

Your Honor, in making your decision, you take No. 5 about records of production, they introduce evidence by word of mouth as to production, and at the same time we just put a man up there and show what production has been and what it has not been, when they have the records and statistics showing, and every human memory is fallible.

Mr. Burr:

If he wants our records of production I would be glad to give them to him.

Mr. Harris:

I think No. 5 and No. 8 and No. 9. I think the way they introduced their evidence No. 5, No. 8 and No. 9 unquestionably ought to be furnished.

Mr. Burr:

We are asking Your Honor to pass on our motion as the subpoena was served.

Mr. Cooper:

Judge, I would like to point out here the subpoena to produce served by us calls for a large amount of similar data, and we would like to also oppose the motion to quash filed by the plaintiffs, at the same time.

The Court:

I thought that was already agreed upon.

Mr. Cooper:

No, sir, our subpoena was served first. It was served a week or two ago. We delayed bringing up that until we got nearer our own case.

Mr. Burr:

And we have a motion to suppress that one. Your Honor can take them both and pass on both of them.

The Court:

I think so.

Mr. Burr:

I had time to prepare my motion to quash the other one, the first one, but the other one was sort of in the air. I just had to take it between moments.

The Court:

Everybody be back tomorrow morning at 9:30 and Court is adjourned until then.

(Thereupon, at 4:10 p. m., July 24, 1941, Court adjourned until 9:30 A. M., July 25, 1941.)

July 25, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:

All right, gentlemen.

Mr. Burr:
There were two additional issues of the "Mining Ore" that were introduced yesterday,—

The Court:
Yes, sir.

Mr. Burr:
—that I was to have time to read over.

The Court:
Yes, sir.

Mr. Burr:
I read them over, and I don't see they were any different from the ones that had been previously introduced, and I make the same objection and take the same exception I did to the others.

The Court:
Mr. Burr, I do not remember what you mean.

Mr. Burr:
It is the iron ore—the "Ore Miner" Magazine.

The Court:
Certain pages.

Mr. Burr:
Yes, sir.

Mr. Harris:
I checked certain pages,—indicated to him certain pages for him to look at, and I haven't yet offered them in evidence, and I don't intend to take up the time of the Court to read them. At some opportune time, either to-

day's session or another session, I will specifically identify those portions—I am not offering the whole magazine, but I will merely identify the pages and portions I do offer. I will not take the time to read them. We laid the predicate with Mr. Ball for the other issues, and I understand—

Mr. Burr:
We don't question that. As I understand they are in with my objection and exception.

The Court:
I will let them in now—

Mr. Harris:
I will select them and point them out for your information.

The Court:
Yes, point them out.

Mr. Harris:
Shall I call a witness?

The Court:
Yes.

Mr. Harris:
Mr. McBrayer.

2513 L. H. McBRAYER, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. What are your initials, Mr. McBrayer?

A. L. H. McBrayer.

Q. H as in—

A. Yes, sir.

The Court:

How do you spell it?

The Witness:

Mc-Brayer.

Q. Mr. McBrayer, how old are you?

A. I will be 33 in September.

Q. Where were you born?

A. Georgia.

Q. How long have you been living in Alabama?

A. About 31 years.

Q. How high did you go in school?

A. Through the seventh—

Q. Through the seventh grade?

A. Yes, sir.

Q. You will have to talk a little louder, Mr. McBrayer, so we can hear you.

A. Yes, sir.

Q. What mine of the Tennessee Company do you work in?

A. Number 13, Ishkooda Division.

The Court:

What?

The Witness:
Number 13, Ishkooda Division.

Q. How long have you been working at Ishkooda 13?
A. It will be 14 years in October.
Q. Did you ever work at Number 11?
A. Yes, sir.
Q. Mr. McBrayer, what jobs have you had at Ishkooda Number 13 since October 14, 1938?
A. Been on the skip tender job.
Q. Steadily?
A. Yes, sir.
Q. What does the skip tender do?
A. He assists in hauling the mun and pulls the ore.
Q. How does he assist? What actual, physical labor about the skip does he do?
A. He gets the skip off the side track and rides the first skip down. He bells the first skip inside.
Q. Is that skip pulled by a cable? You get it off the side track by a cable?
A. Yes, sir.
Q. Pull it—bring it out of the main slope by a cable?
A. Yes, sir.
Q. Do you ride the skip or do you handle the engine that turns the drum that pulls or lowers the skip?
A. I ride the skip.
Q. Whereabouts do you ride the skip? What part of the skip do you ride on?
A. Ride in the chair on the back of the skip.
Q. Do you have any control over the skip after it starts motion going down or coming out of the mine slope?
A. No control over the skip only I handle a signal. If anything should happen I could give a signal, but I have no way of stopping the skip.
Q. Are there any brakes on it you could use to stop it?
A. No, sir.

Q. How do you give a signal? If anything happens going down or coming out how do you give a signal?

A. We have a signal rod on the back of the skip, and there is a cable going down by the side of the track, and you take that rod and touch the cable and it would give a signal.

The Court:

You mean a danger signal?

The Witness:

Yes, sir, a stop signal.

Q. This rod you use, how long is it?

A. I would say about thirty inches long.

Q. Is it a metal rod?

A. Yes, sir.

Q. And there is an electric cable running along down the main slope? Is that cable on the side or up in the roof?

A. It is on the side.

Q. And then when you touch that cable with your rod then what happens at any other place?

A. The engineer gets a signal.

Q. What kind of a signal does he get?

A. It depends on how you touch it with the rod. If you touched it one time he would just get one signal, which is a stop signal.

Q. Well, does he get a bell or horn or what, a buzzer?

A. It is a horn.

Q. It is a horn?

A. Yes, sir.

Q From October 24, 1938, up to May 1, 1941; what time did you report for work as a skip tender?

A. Six o'clock.

Q. Did you have a brass check?

A. Yes, sir.

Q. What did you do with your brass check when you reported for work?

A. I would hang it on the board,—check in board.

Q. At the tally house?

A. Yes, sir.

Q. Now, when you reported for work at six o'clock, did you report in work clothes, or did you have to change your clothes after that?

A. In work clothes.

The Court:

What was your answer?

The Witness:

I reported at the tally house with my work clothes on.

Q. With your work clothes on?

A. Yes, sir.

Q. During the time you have been there as skip tender have you worked all the time on day shift, or do you alternate between day and night?

A. We alternate between day and night.

Q. During those years have the seen you have seen reporting at the tally house reported in their work clothes or reported in their ordinary clothes?

A. They report at the tally house with their work clothes on.

Q. Now, this skip you operate at Number 13 is owned by the Tennessee Company?

A. It is.

Q. You are hired by the Tennessee Company?

A. I am.

Q. None of them men or any of these Unions had anything to do with hiring you or selecting you or paying your wages?

A. They did not.

Q. When you reported at six o'clock and turned in your brass check what is the first thing you do with your skip?

A. The first thing we do would be to pull the skip off the side track.

Q. Then what do you do with it?

A. We make a test run.

Q. Talk a little louder, please.

Do you always make a test run?

A. Yes, sir, always make a test run unless the split shift crew had been using the skip and then the test run,—it would not be necessary.

Q. All right. After making the test run what did you do with the skip?

A. Started lowering the men.

Q. And about what time during those three —

The Court:

Start doing what?

The Witness:

Lowering the men.

Q. What time, during those three years I have mentioned, would you start your first trip lowering men?

A. I would imagine around three or four minutes after six o'clock.

Q. And how long would it take you to lower the men to the man unloading station and pull the skip back up?

A. Around seven minutes.

Q. How fast, in your best judgment, does that skip travel when it is loaded with men on the way down this main slope?

A. I would imagine around twenty miles an hour.

Q. Does it come back out at the same speed or at a different speed?

A. No, sir; it comes out faster because it is empty.

The Court:
Because it is what?

Q. I can't hear you.

The Witness:
Because it is empty.

Mr. Burr:
Because it is empty.

The Court:
Can you talk louder?

The Witness:
Yes, sir.

The Court:
What time does the first skip go down?

The Witness:
About three or four minutes after six.

Q. Now, does anybody, any employee of the company or officer of the company tell you when to start your first skip down with men?

A. Yes, sir.

Q. Who gives you orders?

A. The assistant mine foreman.

Q. In the three years that you have been there, has it or not been customary—I mean the three years I inquired about,—has it or not been customary for the mine foreman or the assistant mine foreman to be there at the beginning of the shift to tell you when to start your skip?

A. It has.

Q. Do you decide what men are to get on the skip or does the assistant mine foreman or mine foreman decide what men are to get on the skip?

Mr. Burr:

We object to that question. That question assumes the mine foreman or assistant mine foreman makes that decision. Let him tell how it is done.

Mr. Harris:

I will change it.

Mr. Burr:

No one may make that decision.

Mr. Harris:

I will change it.

Q. How is it decided when to load the skip?

A. The assistant mine foreman decides when they have a load and he tells them when they have a load or when they haven't a load.

Q. How many men are lowered ordinarily on the first man trip on that skip?

A. I don't know. I have never counted them, but I would imagine around thirty-five.

Mr. Burr:

We don't think imagination would be—

The Court:

What is your best judgment?

The Witness:

I would say around thirty-five.

Q. How many man trips do you run at the beginning of the shift?

A. Usually four.

Q. Do the other man trips—do they carry more or less men than the first man trip?

A. They are—the first one, as the general rule, is the heaviest loaded.

Q. Then, your best judgment the other trips have how many men on there?

A. Thirty, or may be over.

Q. On the skip that you ride is there any place either at the front or back of the skip for any kind of tools or wedges, any other thing to be carried?

A. No, sir.

Q. In your hearing the men did not—do the men have electric lights or carbide lights at number 13?

A. They have carbide lights.

Q. Now, do all the men that ride with you into the mine have carbide lights?

A. Yes, sir.

Q. Has that been true during the three years you have been there?

Mr. Burr:

Judge, to save time there is no dispute about the carbide lights. It has been proven by every witness we put on and by every witness they put on.

Mr. Harris:

I just wanted to be sure they all had carbide lights.

Mr. Burr:

There is no doubt about that. It has been proven by them and by us.

Mr. Harris:

It broke the chain of thought I had. Will Your Honor indulge me just a minute?

The Court:

Yes, sir.

Q. Have you, in carrying these men down on your skip or bringing them out on your skip, ever seen, during those three years, any of them with any kind of tools, and if so, state if they were going in or coming out on your skip?

A. I haven't paid much attention to that, but I have seen them carrying hangers down. I believe that is about the only thing.

Q. Do you—when do you start pulling the ore?

A. Just as soon as we finish hauling the men.

Q. When do you finish hauling the men on the day shift?

A. I imagine around six-thirty.

Q. When you say "Imagine" do you mean that is your best judgment?

A. Yes, sir. My best judgment would be somewhere close to six-thirty.

Q. On this shift, any particular shift of yours, have you ever kept account of how many loads of ore you have hoisted out of the mine during a shift?

A. Yes, sir.

Q. Now, since May first, what would be an ordinary average of the number of ore cars that you would hoist during a shift?

A. I don't know as I would be able to give an average on it.

Q. Well, tell whether or not 200 tram loads would be as much as the average shift for you of would it be less or would it be more?

A. 200 would be less than an average.

Q. What, in your judgment, would be an average run?

A. Over what period of time?

Q. Over a shift?

A. I really don't know hardly how to answer that question.

Q. All right. Now, what time—you report at six o'clock?

A. Yes, sir.

Q. What time do you report off work and pick up your brass check at the tally house?

A. Around three-forty to three-forty-five.

Q. You mean now? Since May first?

A. No, sir.

Q. You worked from six until three-forty or three-forty-five?

A. Yes, sir.

Q. Well, did you get over time during that period?

A. I got paid for nine hours,—nine and a half hours pay. You see I am a nine hour man.

Q. Nine and a half hours pay?

A. Yes, sir.

Q. I didn't hear the rest of it.

A. I am a nine hour man. I work nine hours and they pay me time and a half for an hour which makes nine and a half hours for which I get paid.

The Court:

You pick up your check when?

The Witness:

About three-forty-five.

Q. What about your lunch period? When do you eat your lunch?

A. That is prior to May first?

Q. Yes, sir, prior to May first.

A. Between eleven and eleven-thirty.

Q. Did you take time off to eat or do you continue to hoist ore while you are eating?

A. I take time off to eat.

Q. How much time off?

A. Between twenty and thirty minutes.

Q. Well, were you working out there when you were on a ten hour shift or a nine hour shift? I mean the men working in the mine,—not you, but the men working in the mine.

A. The men were on an eight hour shift.

Q. That is since 1938?

Mr. Burr:

No; that is since 1933.

Mr. Harris:

I will bring it out.

Mr. Burr:

I am just telling you.

Mr. Harris:

I am going on the last three years.

Q. When did you say you first started there as a skip tender?

A. I don't know that I could give the date, but I imagine around nine years I have been acting as a skip tender.

Q. All right. When you first went to work there as a skip tender nine years ago, state how many hours in the shift the underground ore miners were working?

A. They were working ten.

Q. All right. What time of day did you report at the tally house when they were on a ten hour shift?

A. At six o'clock.

Q. What time did you start carrying the men down in the mine on a ten hour shift?

A. The same time we do now. It might vary just a little.

Q. All right. And on a ten hour shift what time did you start bringing the men out of the mine?

A. The best I can remember on what was around four-fifteen or four-twenty.

Q. And you finished at what time?

A. Around four-forty-five.

Q. And on the eight hour shift, up to May first, you would finish around three-forty-five, I believe you said.

Mr. Burr:

No,—

A. That is correct.

Q. Now, did you work out there at any time when the underground miners were on a nine hour shift?

A. No, sir.

Q. The change was from a ten to an eight?

A. It was.

Q. Well, since May first what time do you check in at the tally house?

A. Check in at six o'clock.

Q. And what time do you check out at the tally house?

A. Between ten and fifteen minutes after two, I would say.

Q. What, if any, differences are there in the way that you have operated the skip since May first, and the way you were operating it during the month of April of this year?

A. It is practically the same.

Q. Now, during this period from October, 1938, to May 1, 1941, was the mine running and the men working on five days a week?

A. They were.

Q. Did that apply to both the day shift and the night shift?

A. That is right.

Mr. Harris:

You may take him.

Cross Examination.

(By Mr. Burr):

Q. Mr. McBrayer, you have been a skip tender for about nine years, I believe you said?

A. I believe that is about right.

Q. And all the time you have served as skip tender has been at Number 13, is that right?

A. No, sir, 11—

Q. 11 and 13?

A. Yes, sir.

Q. About how long—were you at 11 first or 13 first?

A. Number 13 first.

Q. And about how long did you serve as skip tender there?

A. I couldn't hardly answer that—

Q. We don't care exactly, but just your best judgment?

A. The only time I was at Number 11 was when 13 was down,—when they had us all down there,—all three crews.

Q. The only time you were down there was when they spread the work during the depression?

A. Yes, sir.

Q. The operation is about the same at Number 11 as at Number 13?

A. Yes, sir.

Q. You have been at 13 for the last several years, I suppose?

A. Yes, sir.

Q. About how long would you estimate you had been on that same job at 13 continuously, just your best judgment?

A. Oh, I would imagine about seven years.

Q. The men, of course, go in the mine with their work clothes, as you told Mr. Harris?

A. They do.

Q. They change from their street clothes to their work clothes at the bath house?

A. Yes, sir.

Q. They come to the bath house at different times and bathe at different times and come to the bath house at different times?

A. The majority of them come around six o'clock.

Q. I didn't ask you about the majority of them. You run the skip until six-thirty, don't you, Mr. McBrayer?

A. Yes, sir.

Q. I am asking you before May 1, 1941?

A. Yes, sir.

Q. You ride on a chair on the back of the skip?

A. Yes, sir.

Q. The first thing you do in the morning is to get the skip off the side track?

A. Yes, sir.

Q. And if the split shift crew has not been using it, you make a test run with the skip?

A. Yes, sir.

Q. If the split crew has been using the skip, it is not necessary to make a test run?

A. No, sir.

Q. But it is your business to be there about six o'clock, and if it is necessary, to make the test run?

A. Yes, sir.

Q. You start hauling the men down about six-four, I believe you said?

A. That is about right.

Q. That is your judgment?

A. I haven't timed it. We have to make the safety run. That would vary. I imagine an average would be about six-four.

Q. Did you ever keep time over a long enough period of time to get an average, or is that your best judgment about it?

A. I did at one time.

Q. For how long did you keep it?

A. For about two weeks.

Q. Do you know about when that was?

A. No, sir, I don't. It would be in the three year limit.

Q. Would you say in '38 or '39?

A. I don't know.

Q. Did you keep that memorandum?

A. I haven't got them with me.

Q. Do you recollection what that memorandum showed as to the average?

A. About four minutes after six.

Q. You say it would take about six or seven minutes for a round trip?

A. That is just my best judgment.

Q. I know. You never timed that?

A. No, sir.

Q. You ran how many?

A. Four.

Q. Four?

A. Yes, sir.

Q. And the first one would hold about thirty-five, and the remainder somewhere between thirty and thirty-five?

A. That would be my best judgment.

Q. I know you haven't counted them, but that is just your best judgment?

A. Yes, sir.

Q. I believe you say the assistant mine foreman told you when to start the skip?

A. Yes, sir.

Q. He would make up his mind when the skip had enough and tell you when to start it?

A. He did. That applies to the first trip.

Q. That applies to the first trip?
A. Yes, sir.
Q. And not the others?
A. No, sir.
Q. After the first trip anybody—
A. Why, I didn't start only the first trip. The mine foreman would give the signal after that.
Q. You mean you didn't operate all the skips?
A. No, sir. We have two rappers on each shift.

The Court:
Two what?

The Witness:
Two skip tenders.

Q. You would run one trip and your buddy that worked opposite you ran the other?
A. Yes, sir.

The Court:
I don't understand that. I understand his buddy was on the other shift.

Mr. Burr:
No, sir, on the same shift.
Q. You have two skips?
A. No, sir, we have one skip, but we have two skip tenders on day and night.
Q. Suppose you take the first one down, we will say.
A. Yes, sir.
Q. Would you take the second or who was that?
A. My buddy would take the second one if I took the first one.
Q. How did you do that? Did you change at the bottom? Did you change at the bottom?

A. No, sir; we would both stay at the bottom.

Q. One of you would ride down and stay there and send the skip out?

A. Yes, sir.

Q. And the other would ride down with that skip and you would send it up again from the bottom?

A. That is right.

Q. That is the way it was done?

A. Yes, sir.

Q. The time you are talking about you rode about half of the skips down on your shift and your buddy rode the other half down?

A. No, sir; I rode one down and the other he rode it.

Q. You divided it?

A. Divided those two.

Q. Were there four of you?

A. No, sir.

Q. There were four trips?

A. Yes, sir.

The Court:

Who rode the other trips?

The Witness:

Generally a head miner.

Q. Neither one of you rode the other ones?

A. No, sir.

Q. That is the way it was?

A. Yes, sir.

Mr. Burr:

I don't know whether I get it or not. I may be thick headed this morning.

The Court:

I get what he says. I know what he says, but I don't know what he means.

Q. You take the first one down?

A. Yes, sir.

Q. And your buddy the next one?

A. Yes, sir.

Q. And somebody else would take the third and fourth one down?

A. Yes, sir.

Q. Where would you be?

A. I would be down handling the skip at the bottom.

Q. How long did you remain there?

A. Until they got through hauling the men.

Q. Sir?

A. Until they got through hauling the men.

Q. You hauled no ore with the men?

A. No, sir.

Q. Then, when you got through hauling the men did you go out and commence hauling ore?

A. Yes, sir.

Q. And at the end of the shift you would take the men out?

A. Yes, sir.

Q. Did you do it the same way, you and your buddy alternate?

A. I would generally ride the first one and my buddy would ride the second one. Most anybody would ride the others.

Q. Most anybody would ride the others?

A. Yes, sir.

The Court:

Mr. Burr, I don't know what he was doing while the third and fourth trips were being hauled. What was his buddy doing during that time?

The Witness:

He might go out to a little time shack and make out a report where he had examined the skip.

The Court:
Did you make out a report?

The Witness:
Sometimes I did; didn't but one of us do that.

The Court:
That he had examined the skip?

The Witness:
Yes, sir.

The Court:
To see it was in good repair?

The Witness:
Yes, sir.

The Court:
Did you do that every morning?

The Witness:
Yes, sir.

Q. During the time you have been there have they been using the same skip or same kind of skip?
A. Yes, sir, same kind of skip.
Q. And used it in the same way?
A. I would say in the same way; yes, sir.
Q. The way you handle the skip, you sit in the chair and have this piece of rod, and if you want the skip to stop you hit the cable one time?
A. Yes, sir.
Q. This cable carries thirty-two volts?
A. I don't know; it is small.
Q. And the way you do that, you hit that with a rod and it blows a horn down in the engine room?

A. Yes, sir.

Q. And one means stop?

A. Yes, sir.

Q. And what else—

A. Eight bells is to notify the engineer there are men on the skip.

Q. When you are talking about one that is hauling ore?

A. No, sir; that is when you want to stop.

Q. When you are hauling men you hit it eight times?

A. Yes, sir.

Q. That let's him know it is a man trip and ready to start?

A. Yes, sir.

Q. And, if, while you are going down, anything should happen for any reason and you wanted to stop you would give one signal?

A. Yes, sir.

Q. And coming back out, if you wanted to start you would give five?

A. No, sir.

Q. What is it?

A. Eight and four.

Q. What is the eight for?

A. You give eight for the engineer to know there are men on the skip, and the four signal is to pull out slow.

The Court:

If you give the eight signals he doesn't do anything until he hears from you further?

Mr. Burr:

That is right.

The Witness:

That is right.

The Court:

And then when he gives the four signal that means for him to pull out of there slowly?

The Witness:

Yes, sir, that is right.

Mr. Burr:

That is right.

Q. Now, you are familiar with these rules, page 52:

"No one must get on man skip or cage while it is in motion or until eight bells signal has been given and permission to get on has been given by man in charge of skip. No one must get off of skip or cage until it comes to a dead stop.

"Riding on skips is strictly prohibited except on regular man trips and in emergency cases, and then only on authority of mine foreman.

"When hoisting or lowering man trips, skips must be free of tools and material."

You are familiar with those rules, are you?

A. I have those, yes, sir.

Q. Now, you said you had occasionally seen the men carrying hangers on the skip?

A. I have.

Q. Has that been occasionally?

A. Well, it has been on several occasions.

Q. On several occasions? About how many times would you say it has been in the last three years, say, prior to May 1, 1941?

A. I wouldn't hardly know how many times, but—

Q. Just some idea; five or ten?

A. It would be more than that.

Q. Ten or twenty? Just how many times over that period of time, would you say?

A. Oh, possibly forty or fifty—

Q. Possibly forty or fifty?

A. Over that period of time.

Q. Now, when you have seen that during those forty or fifty times in the last three years would there be just some of the men that rode the trip that had hangers?

A. Yes, sir.

Q. It wouldn't be all of them by any means?

A. No, sir.

Q. How many would you say—when you noticed hangers on the skip during that period of time how many men had them, would you say, in your best judgment?

A. I wouldn't know just how to answer that; may be one, or two or three, may be not over one.

Q. May be not over one?

A. No, sir.

Q. Now, did you say anything to them about not carrying them?

A. No, sir.

Q. Did you call the foreman or assistant foreman's attention to it that they were carrying them?

A. No, sir. He was sitting—

Q. I am just asking you did you tell him?

A. No, sir.

Q. He was sitting—go ahead.—I will let you tell it if you want to.

A. He was standing closer to the men than I was.

Q. Do you know whether he saw them?

A. No, I don't know.

Q. Do you know whether the head miner or the fellow that carried them got permission to carry them on account of their needing sharpening or straightening?

A. No, I don't know.

Q. All you know is what you saw on the skip during that period of time?

A. Yes, sir.

Q. And going back beyond the three years, did the same thing happen before that?

A. Yes, sir.

Q. Just about in that same way?

A. Yes, sir.

Q. It has been going along that way all the time—

A. Yes, sir.

Q. Since you have been there?

A. Yes, sir.

Q. I call your attention—getting back to these signals, —page 21 of the defendants' Exhibit 1, and ask if these are the signals that were used in handling the skip:

One long ring—stop.

A. Right.

Q. One short ring –Warning Signal when lowering?

A. Right.

Q. Two rings—hoist.

A. Yes, sir.

Q. Three rings—lower.

A. Yes, sir.

Q. Four rings—hoist slowly?

A. That is right.

Q. Five rings—Lower slowly.

A. Yes, sir.

Q. One long ring and two short rings—hoisting sinking ship (skip).

The Court:

What is that?

Mr. Burr:

I don't know.

Q. What is a sinking ship (skip)?

A. It is a little skip on behind the regular skip when they are slabbing ore.

Q. Hauling materials?

A. No, sir.

Q. Eight rings—man on skip?

A. Yes, sir.

Q. Get Assistant Engineer on Platform. What does that mean?

A. I can answer that. That is a different department from what I am.

Q. All right.

A. They require an assistant mine foreman to be on the tower before a skip is moved.

Q. That is in case of accident to the engineer or anything like that?

A. Yes, sir.

Q. Twelve rings—Skip derailed. Do not move skip on this signal?

A. Yes, sir.

Q. Those are the rules for the signals that you gave?

A. Yes, sir.

Q. Now, you went to work at six o'clock in the morning, did you?

A. Yes, sir.

Q. Is that when you worked started?

A. Yes, sir.

Q. Is that when your time started on your pay check for which you got your nine hours, started at six o'clock?

A. Yes, sir.

Q. And they have been on an eight hour schedule there since about 1933 or '34, haven't they, Mr. McBrayer?

A. I think it was sometime in '33.

Q. Sometime in '33?

A. Yes, sir.

Q. All right. Now, ever since that time the computation of your time began at six o'clock?

A. Yes, sir.

Q. And you had half an hour for lunch?

A. Supposed to have it.

Q. Well, you had it, took it when you wanted it, ate it?

A. Yes, sir.

Q. You said you took from twenty to thirty minutes for lunch?

A. Yes, sir.

Q. Then the pay time, the computation of it,—you told Mr. Harris you generally got out from three-thirty to three-forty-five as well as you could remember?

A. No, sir; three-forty to three-forty-five.

Q. Three what?

A. Three-forty.

Q. Three-forty?

A. Yes, sir.

Q. You got paid for eight hours straight time? What was your salary, do you remember, figured upon before May 1, 1941, during those years?

A. Per hour?

Q. Yes, sir, per hour?

A. Sixty and a half cents an hour.

The Court:

Is that sixty?

The Witness:

Sixty and a half cents an hour.

Q. You got that for eight hours?

A. Yes, sir.

Q. And for the extra hour you got an hour and a half?

A. That is right.

Q. That is right. You have been getting that all the time you have been working that long?

A. Yes, sir, since the eight hour—

Q. That is what I am talking about.

A. Yes, sir.

Q. Now, since May 1, 1941, you go in at the same time in the same way?

A. Yes, sir.

Q. Aren't you required to report a little earlier now than you were before?

A. After May first?

Q. Yes, sir.

A. Yes, sir. I report to work at five-forty-five.

Q. Five-forty-five now?

A. Yes, sir.

Q. And you come out now at three-forty-five; is that right?

A. No, sir.

Q. What time?

A. We start pulling the men at one-forty-five.

Q. Well, I mean one-forty-five. You start at one-forty-five? That is what I mean when I said three. You start pulling them at one-forty-five and you are through by what time?

A. I would say ten or fifteen minutes after two.

Q. Ten or fifteen minutes after two?

A. Yes, sir.

Q. And you pay now runs until two-forty-five?

A. Yes, sir.

Q. With half an hour for lunch?

A. They don't give us skip tenders any lunch period now.

The Court:

Don't get any lunch period?

The Witness:

No, sir.

Q. Since May 1, 1941?

A. No, sir.

Q. Mr. McBrayer, you have belonged to the Smelters Union since what time, please, sir?

A. Since August, 1933.

Q. Have you ever served on any committees, grievance committee at Ishkoola or been an officer of the union at Ishkooda?

A. Yes, sir.

Q. What committee have you served on prior to May 1, 1941, and what office have you held?

A. I hold an office as Financial Secretary, and I have only served on the local and general grievance committees.

Q. You have served on both the local and general grievance committees?

A. Yes, sir.

Q. The local committee is the one that handles the local requests and complaints and grievances?

A. Yes, sir.

Q. That the individual employees want the committee to bring up for them?

A. Yes, sir, with the local superintendent.

Q. With the local superintendent?

A. Yes, sir.

Q. That is with Mr. Cameron here?

A. Yes, sir.

Q. Have you been on that committee all the time since 1933 up to May 1, 1941?

A. No, sir, I haven't been on it all the time. I don't believe I could give you the date I began serving.

Q. You couldn't give me the date you began serving?

A. No, sir.

Q. How long have you been on that committee the best of our recollection?

A. Oh, two or three years.

Q. That is two or three years prior to May 1, 1941?

A. Yes, sir.

Q. The general grievance committee is the one that took up questions you couldn't adjust with your local superintendent with Mr. Ball and Mr. Kelly?

A. That is right.

Q. And you have served on that committee how long?

A. The same length of time I have served on the local committee.

Mr. Burr:

That is all, Mr. McBrayer. Thank you, sir.

Re-Direct Examination.

(By Mr. Harris):

Q. Mr. McBrayer, there is one thing about the skip that I still don't understand. When it gets to the bottom at the man unloading station who gives the signal for it to stop? Take the first skip down—

A. If the barn man is not hanging around there the engineer generally just stops it himself.

The Court:

The barn man?

The Witness:

Yes, sir, stable cleaner.

Q. Now, as you ride,—take that first skip down into the mine,—when you approach the man unloading station do you give any signal while approaching it on the skip to let the engineer know you are getting close to the man unloading station?

A. No, sir.

Q. And when you arrive at the man unloading station do you give him any signal to let him know you are the place to stop?

A. No, sir.

Q. Well, now, you said something about somebody else being there who would give him a signal to stop, that he had the skip at the right place for the men to get out.

A. Well, sometimes the stable cleaner would and then sometimes nobody at all would. It would stop itself.

The Court:

Can he tell from the drum or cable where it is?

Mr. Burr:

There is an indicator, isn't there?

The Witness:

Pretty close.

Q. Pretty close?

A. Yes, sir.

Mr. Burr:

That is up on the hoist.

Q. How far would it vary if there was no man there to give him a signal to stop?

Mr. Burr:

We object to that. He assumes it was necessary to give him a signal.

The Court:

If he knows.

Mr. Burr:

He assumes there should be somebody there to give him a signal.

Mr. Harris:

I don't assume anything of the kind. I asked him how close it would stop.

A. It depends on the engine he had. Some would stop closer than others. It wouldn't vary over two or three feet to a skip length with any of them.

Q. All right. If the stable man was standing there, what kind of signal would he give to the engineer to stop the skip?

A. He would just give one signal.

Q. How would he give it?

A. Pull on the rope that is connected to the signal latch.

Q. When you give your bells or signal do you pull on that rope or use that rod you brought with you down on the skip?

A. Coming down on the man trip?

Q. Yes.

A. The assistant mine foreman would give the eight bells, and the skip tender that rode the first trip down would give the five bells so the engineer would know when to lower. That would be mostly to test out that signal.

Q. I don't think you understand me. Coming down in the bottom of the mine slope after having brought the first man trip down, what sort of signal is given to the engineer to pull the empty skip out?

A. Give him four bells, four signals.

Q. How do you give it to him?

A. By pulling on the cord tied to the signal latch.

The Court:

Tied to what?

The Witness:

That is a cord down there that is tied to—I don't know what you call it.

Mr. Burr:
Switch?

The Witness:
I call it a latch.

The Court:
Latch or switch?

The Witness:
Yes, sir.

Q. You give him a signal to indicate the men have gotten off and the skip is empty and it is now time for him to pull it out?

A. Yes, sir.

Q. Now, take when you are hauling the men out of the mine: You give him eight signals to tell him the men are getting on the skip, do you?

A. That is right.

Q. Then; when they have gotten on the skip and it is full and ready to pull out, how many signals do you give him?

A. Give him four.

Q. Now, where is it that the mine foreman comes in with the signal you mentioned awhile ago; is that going down on the first skip or coming out on the first skip?

A. The mine foreman—the assistant mine foreman gives the eight bells for the men to load up in the skip, and the mine foreman rides the bail of the skip out on the first trip and he gives the four.

Q. That is coming out of the mine?

A. Yes, sir.

Q. Going down in the mine on the first one, does the assistant mine foreman ride that trip with you or does he stay out on top?

A. He stay out on the top.

Q. Does the assistant mine foreman on the first trip down have to pull a rope or give any kind of signal to the engineer to start that first trip down?

A. No, sir. He gives the eight signals for the men to load in the skip.

Q. Who gives that?

A. The assistant mine foreman.

Q. How does the assistant mine foreman know the skip is full and they should start pulling it down or lowering it?

A. When it gets full.

Q. I mean the hoisting engineer. I don't mean the assistant mine foreman. That was a slip of the tongue.

A. Oh, the hoisting engineer?

Q. How does he know it is loaded?

A. When he receives the five signals after having gotten eight.

Q. Who gives the five?

A. On the trip down?

Q. Yes, sir.

A. The skip tender.

Q. Do you give that signal with the rod with which you reach out and touch the wire?

The Court:

Does he use that rod?

Q. Do you use that rod every time to give those signals as you go down?

A. No, sir.

The Court:

That is what I thought.

A. Just on the first trip.

Q. On any trip do you carry that rod with you to give a danger signal if anything happens?

A. The man that is on it, yes.

Q. Now, you said something about an engineer being required to be somewhere. What was that you started to say?

A. That was an assistant engineer.

Q. What does he have to do with the skip?

A. Not anything at all.

Mr. Harris:

I think that is all.

Re-Cross Examination.

(By Mr. Burr):

Q. The assistant engineer, on this signal, gets on the platform?

A. Yes, sir.

Q. That is a safety measure, isn't it?

A. Yes, sir.

Q. So if anything happens to the engineer he will be there?

A. Yes, sir.

Q. And the engineer, when he is stopping his skip down at the underground unloading place, he has an indicator on his engine that shows him it is down at the bottom?

A. That is right.

Q. They don't have to have a signal to stop; they can stop on the indicator on the engine?

A. Yes, sir, he needs one.

Q. He gets that from some one on the skip?

A. No, sir; it is pretty hard to get it from the skip.

Q. Somebody gets off and gives the signal?

A. Sometimes on that first trip the stable cleaner will give it and sometimes he gets no signal until he stops. When the skip tender gets off he will give the signal then.

Q. And you say he will stop in two or three feet of the same place?

A. Something like that; some of them a little further.

Mr. Burr:

That is all.

The Court:

Mr. McBrayer, when do you get off from work since May first?

The Witness:

Since May first?

The Court:

Yes, sir.

The Witness:

I hand in my brass check at five-forty-five. That is the beginning of the shift.

The Court:

That is in the morning?

The Witness:

Yes, sir.

The Court:

When do you get off in the afternoon?

The Witness:

It will vary. It will run, I will say, ten or fifteen minutes after two.

Mr. Burr:

And you are paid up until two-forty-five?

The Witness:
That is right.

Mr. Smith:
Your pay starts when you put the brass check up there and runs until you get back?

The Witness:
It does.

Mr. Smith:
And all the operating men of that skip, their pay starts when they hang up their checks?

The Witness:
Yes, sir.

Mr. Smith:
Ends when they pick them up that evening?

The Witness:
Yes, sir.

Mr. Smith:
That is the men handling the skip and getting you men down to your unloading station?

The Witness:
Their pay starts at six o'clock.

Mr. Burr:
Of course, they get the nine hour pay just like you do?

The Witness:
Both the skip tenders.

Mr. Burr:
That is what I say, both the skip tenders.

The Witness:
Yes, sir.

Mr. Burr:
Come down.

(Witness excused.)

Mr. Harris:
Call Mr. Scott.

Mr. Burr:
Could we have three or four minutes recess now before we start?

The Court:
Yes, I think we had better take a recess.
What are your initials, Mr. Scott?

Mr. Scott:
W. A.

The Court:
We will take a few minutes recess.

(Thereupon proceedings were in recess from 10:30 A. M. to 10:40 A. M., at which time proceedings were resumed as follows:)

The Court:
All right.

2549 W. A. SCOTT, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. This is Mr. W. A. Scott?
A. Yes, sir.
Q. How old are you, Mr. Scott?
A. Forty-five.
Q. Where were you born?
A. Parkwood.
Q. Parkway, Alabama?
A. Parkwood.

The Court:
In Bessemer?

The Witness:
Yes, sir.

Mr. Burr:
In Bessemer, yes, sir.

Q. How high did you go in school?
A. Tenth grade.
Q. What position do you hold?
A. Hoisting engineer.
Q. For what company?
A. Tennessee Coal, Iron & Railroad Company.
Q. What mine do you work at?
A. Number 13 at Ishkooda.
Q. How long have you been working at Number 13 at Ishkooda?
A. Well, ever since '36, at 13.
Q. When did you first start working for the Tennessee Company?

A. March 19, 1917.

Q. What did you do then?

A. When I started to work I worked under Mr. E. M. Ball as Superintendent and Mr. Will Fowler as Mine Foreman at Number 11 as sinking hoist engineer.

Q. Now Mr. Ball is now your present General Superintendent?

A. General Superintendent, yes, sir.

Q. And your present Superintendent is—

A. Mr. C. B. Cameron.

Q. The gentleman sitting there?

A. Yes, sir.

The Court:

You say you started in 1917?

The Witness:

Yes, sir.

Q. You ran an underground mucking hoist first?

A. Yes, sir.

Q. How long was it before you changed to something else?

A. Oh, about three months.

Q. What did you do then?

A. Went to drill helper at number 12.

Q. Well, did you keep on working as a drill helper, working in the mines, or did you follow any other kind of work?

A. No, sir; I started to drilling about three months after I started drill helping.

Q. Was that in 1917?

A. Yes, sir.

Q. Did you work there through 1917 and 1918?

A. No, sir. I went to the Army on September 17, 1917.

Q. Well, when did you get out of the Army?

A. March—I forget the date—March, in 1919?

Q. After that two year shift—two year hitch in the Army, did you go back to working for the Tennessee Company?

A. I did.

Q. Where did you work then?

A. Well, I worked at two places, number 11 and number 12, as slope track foreman.

Q. How long—did you work as a skip tender at either 11 or 12?

A. Yes, sir, number 11.

Q. And then you say you worked as a slope track foreman?

A. Yes, sir.

Q. Was that inside or outside?

A. Yes, sir; inside.

Q. Well, did you do any outside work?

A. Well, I went to skip tending after I went off the slope track foreman's job. I skip tended about twelve months, and came outside on the machinist force as crusher repairman.

Q. How many mines have you worked at at Ishkooda?

A. All four of them, 11, 12, 13 and 14.

Q. Is the way they lower them in the mine and bring them out of the mine now the same as it was back in those days?

A. Well, in those days no one was allowed to ride the skip except the skip tender and mine foreman.

Q. I mean in the last three years?

A. Oh yes.

Q. Substantially the same?

A. Yes, sir.

Q. At all four mines do they hand in a check in reporting for work and take up a check at the end of the shift?

A. I couldn't say about that. I don't have anything to do with that.

Q. At your own mine?

A. No, sir. I don't have to check in.

Q. What is your job?

A. Hoist engineer.

Q. You don't have to check in or check out, either one?

A. No, sir.

Q. Where is your hoisting engine? Where are you located on that?

A. Where am I located on the engine?

Q. Where is the engine located?

A. Down in the engine room about 200 or 250 feet from the tally house.

Q. What do you hoist?

A. Men, ore, and lower timbers and pull out materials, load material.

Q. Can you tell when you are hoisting men and when you are hoisting ore?

A. I can?

Q. How do you know the difference between hoisting men and hoisting ore?

A. Well, in lowering men or hoisting men I get an eight bell signal. That notifies me they are loading the men, and I am not supposed to move the skip until I get a five bell signal or a four bell signal to lower or pull.

Q. What is the four for?

A. That is to hoist.

Q. And five is—

A. To lower them.

Q. To lower them?

A. Yes, sir.

Q. What sort of signal do you get to let you know you are through hoisting men?

A. In the afternoon?

Q. Yes.

A. Well, they generally give me a ring off signal, they can it, or, if the slope track crew is going to use the skip, they signal me back to hitch to the larry, the timber larry.

Q. What is the signal to notify you you have finished hoisting men out of the mine?

A. They don't usually give me a signal if they are going to use the skip. If they are not going to use it they give me a ring off signal, several bells. That is, they put the skip on the side track and give me the signal.

Q. Before May 1, 1941, what time did you report for work?

A. Now,—seven o'clock.

Q. Not now—

A. I understand, seven o'clock.

Q. From October 24, 1938 to May 1, 1941, what time did you report for work?

A. Seven o'clock.

Q. Is there anybody to run the hoist engine while you are not there?

A. Yes, sir.

Q. Who starts lowering the men a few minutes after six?

A. We have four crews on the engine. There are two crews in the engine house all the time. The one—we work on split shifts.

Q. What?

Mr. Burr:

They work on split shifts.

A. The one on the morning,—the seven to eleven shift starts lowering them in.

Q. What is your tour?

A. From seven to three.

Q. From seven to three?

A. Yes, sir.

Q. You had another man with you?

A. Yes, sir; assistant engineer.

Q. Then the man who lets the men down in the mine on the day shift would get off at seven o'clock?

A. That is right.

Q. And in those years that you were there—I mean in those three years that I have asked you about, you would later lower the men into the mine yourself or pull them out?

A. No, sir, not on the day shift.

Q. What about the night shift?

A. Well, I do on the night shift, the beginning of the afternoon shift, at night.

Q. When is that?

A. What time do I go to work?

Q. When do you start lowering the men and hoisting them?

A. Six o'clock.

Q. How long, during those three years, did it take you to finish lowering the men?

A. Twenty-five to thirty minutes.

Q. And when you pulled them out, how long did it take you?

A. About the same.

Q. From the place where you were at the hoisting engine could you see the men getting on or getting out of the skip?

A. No, sir, I can not.

Q. Now, before May 1, 1941, how long did it take you to run a man trip, a round trip man trip?

A. All the way from five to six or seven minutes.

Q. Since May 1, 1941, has there been any difference in the time that it took?

A. There has, yes, sir.

Q. What is that difference?

A. Well, I make a round trip now—they load up the men; I lower them to the man unloading station and I am back outside in five minutes.

Q. Did you do that under orders from anybody?

A. I did.

Q. Who gave you those orders?

A. The Master Mechanic, Mr. J. E. Williams.

Q. What orders were those he gave you?

A. To speed up the man trips.

Q. Now, were you working as a hoisting engineer at any time while the underground men were working on a ten hour shift?

A. I was.

Q. Now, on that ten hour shift were you working in the day time or on the night shift?

A. Rotated just like I do now.

Q. When the men were on a ten hour shift and you were the hoisting engineer for the day shift, what time did you start lowering the men into the mine?

A. Six o'clock.

Q. Then, when they weren't on an eight hour day shift and you were on day what time did they start lowering them in the mine?

A. Six o'clock.

Q. Now on a ten hour day what time did they start bringing them out of the mine?

A. My best recollection, around four or four fifteen; I don't remember.

Q. And before May 1, 1941, when they were on an eight hour shift, what time did you start bringing the men out of the mine?

A. Before May first?

Q. Prior to May first.

A. Three-fifteen.

Q. So, on an eight hour shift the men were underground just one hour less than they were on a ten hour shift?

A. Yes, sir.

Q. Have you examined the skips at number 11 and 13 both?

A. Do I examine them?

Q. Have you seen them, examined them?

A. Yes, sir.

Q. Are they substantially the same?

A. They are.

Q. Do you recognize those (handing witness pictures) as the skips that your have been lowering—

A. Yes, sir.

Q. —and hoisting out at number 13?

A. Yes, sir.

Q. All right.

Mr. Burr:

Let me see those. Have they already been identified?

Mr. Harris:

Yes, sir. They have already been introduced.

The Court:

When you were on a ten hour day basis what time did you get your last men—what time did you quit work, four-forty-five?

The Witness:

Well, I quit work at three o'clock.

The Court:

When you were on a ten hour shift?

The Witness:

Yes, sir.

The Court:

When did you finish bringing the men out? When were the men brought out?

The Witness:
Well,—

The Court:
Did you bring them out before you quit?

The Witness:
No, sir.

The Court:
When was that, four-forty-five?

The Witness:
Yes, sir, the best of my recollection that is the way it was.

The Court:
You started about four-forty-five bringing them out, or do you know?

The Witness:
No, sir, I couldn't recall the time back there.

The Court:
You started carrying them down at six o'clock in the morning?

The Witness:
Yes, sir.

Q. Well, now, I am uncertain about your answer on hauling the men out of the mine when they were working on a ten hour shift.

Did you ever, as hoisting engineer, haul them out of the mine when they were working on a ten hour shift?

A. Well, I couldn't recall that; I don't remember.

Q. How long have you been a hoisting engineer?

A. Eighteen years.

Q. And you have been working out there as a hoisting engineer for eighteen years?

A. Yes, sir, as an extra hoisting engineer and extra compressor man.

Q. Well, you worked steadily as a hoist man and extra man about eighteen years?

A. No, sir; about two years as extra hoist.

Q. All right. What were those two years?

A. You mean where I worked?

Q. That you were extra and not regularly at it?

A. At 13—all four places.

Q. What two years were they? Were they 1922 or 1920 or 1925? When were they?

A. Oh, I beg pardon. Back in 1920, 1923, 1921 and 1922.

Q. Then you were a hoisting engineer lowering the hoisting the men when they were on a ten hour shift, were you?

A. Yes, sir.

Q. And did you, during that time, lower men into the mine?

A. I did.

Q. Did you do it on the day shift or night shift or both?

Q. All right. On the day shift, when they were lowered by you into the mine when did you start lowering them?

A. Six o'clock.

Q. On the day shift, when you started pulling them out of the mine on a ten hour shift, when did you start pulling them out?

A. I couldn't recall that time.

Q. What?

A. I can't remember—

Q. Didn't you tell me awhile ago that you started pulling them out at four-fifteen?

A. I did not.

Q. Just before the Judge asked you a question?

A. No, sir, I did not.

Q. You don't remember that?

A. Not four-fifteen, no, sir.

Q. What time was it you told me awhile ago you started hoisting the men out when they were on a ten hour shift?

A. Well, I just couldn't recall the time.

Q. How many years did you hoist men out while they were on a ten hour shift?

A. I don't know; about four or five years.

Q. And you can't tell us what time of day you hoisted men out for four or five years that they were on a ten hour shift?

A. Well, the best of my recollection it was around four-fifteen.

Q All right. Now, when they were on a night shift, ten hours, during those four or five years what time did you start hauling them out?

A. Beg your pardon. I didn't get it.

Q. When you were hauling a night shift out of the mine during the time they were on a ten hour shift, what time did you start hauling them out?

A. The same thing four-fifteen.

Q. Four-fifteen in the morning?

A. Yes, sir.

Q. And did you start lowering them at six o'clock in the evening?

A. Yes, sir.

Q. So that the difference between the time the men were underground on a ten hour shift and the time they were underground on an eight hour shift was about an hour and ten minutes when you were hoisting them, wasn't it?

A. That is rght.

Mr. Harris:

That is all.

Cross Examination.

(By Mr. Burr):

Q. Mr. Scott, do you recall about when they went on an eight hour shift? It was about 1933, wasn't it, about that time?

A. That is when the underground men went on an eight hour shift.

Q. That is what I am talking about, underground?

A. Yes, sir.

Q. You didn't work underground?

A. No, sir.

Q. You were on the surface?

A. Yes, sir.

Q. You have been on an eight hour shift all the time?

A. Since March 15, 1930.

Q. The engineer during that time have always been on three shifts?

A. Yes, sir.

Q. Eight hour shifts?

A. Yes, sir.

Q. Continuously?

A. Yes, sir.

Q. During the time the men were working underground, producing, there was a split between that time while the material men and that sort of people work?

A. Yes, sir.

Q. Of course the engine had to operate to haul the material men and material while the producers couldn't work or didn't work?

A. Yes, sir.

Q. You work has been eight hours all the time?

A. Yes, sir.

Q. You started your day's work, I believe you said, at six o'clock whether eight hours or ten hours?

A. No, sir.

Q. What is that?

A. Seven o'clock.

Q. Seven o'clock?

A. Yes, sir.

Q. When you hauled men into the mine—

A. We did work for a time from six to two.

Q. Let's take on the ten day shift—did you start letting the men in the mine around six o'clock?

The Court:

You mean ten hour?

Mr. Burr:

Yes, sir.

The Court:

You said ten day shift.

Mr. Burr:

Ten hour shift.

Q. You commenced letting the men down in the mine about six o'clock?

A. Yes, sir.

Q. Under the eight hour shift you commenced letting them down about the same time?

A. Yes, sir.

Q. On the ten hour shift they didn't have lunch underground or had it on their own time?

A. I don't know. I don't think they did.

Mr. Burr:

That has been proven, your Honor.

Q. On the ten hour shift you commenced bringing them out, you say your recollection is, about four-fifteen?

A. Yes, sir, on the ten hour shift.

Q. On the eight hour shift your best recollection is you commenced bringing them out at three-fifteen?

A. Yes, sir, three-fifteen.

Q. The time you are giving is the time they went underground and the time they came out and you are not giving anything about when they were at the face?

A. No, sir.

Q. You don't know anything about that?

A. No, sir.

Q. You don't know whether their work time ran on the ten hour shift from six-thirty to four-thirty without lunch?

A. No, sir.

Q. And on the eight hour day from six-forty-five to three-fifteen with lunch?

A. Yes, sir.

Q. From where you are you can't see them at all?

A. No, sir.

Q. Do you know when those pictures were taken that were shown you?

A. No, sir.

Q. All you are identifying, that is the skip?

A. Yes, sir.

Q. You don't know whether that is the way the men get on?

A. Yes, sir, that is about the way they get on.

Q. You have seen them get on?

A. Yes, sir.

Q. It has always been that way they got on?

A. Yes, sir.

Q. Has there been any change in that skip or the way the men get off or get on since you have been working there?

A. No, sir, not that I know of.

Q. That has always been the same way?

A. Yes, sir.

Q. Now, you operate those skips both for men, hauling ore and material by signal?

A. Yes, sir.

Q. Do you have an indicator on your engine?

A. Yes, sir.

Q. Does that indicator show you when you get down to the man unloading station?

A. It does.

Q. Do you have to be signalled when to stop it when you get—went it gets down there or do you use both?

A. Use both.

Q. Use both?

A. Yes, sir.

Q. But you can stop it by the indicator?

A. Yes, sir, absolutely.

Q. You have read these rules, of course, Mr. Scott?

A. Yes, sir.

Q. Your hoist engineer's signals?

A. Yes, sir.

Q. That is what you go by as far as you can?

A. Yes, sir.

Q. You are familiar with them and you follow them?

A. Yes, sir.

Mr. Burr:

I believe that is all I want to ask Mr. Scott.

Mr. Harris:

That is all.

The Court:

You are excused.

(Witness excused.)

The Court:

Who will you have?

Mr. Harris:
Is Mr. Giglio over here?

A Voice:
Yes, sir.

Mr. Harris:
Come around.

2566 TONY GIGLIO, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:
How do you spell your name?

The Witnes:
G-i-g-l-i-o.

The Court:
What is your given name?

The Witness:
Tony.

(By Mr. Harris):
Q. Is that man that just moved over and got behind Mr. Burr your Superintendent?
A. Yes, sir.
Q. The man who just left Mr. Burr was not your Superintendent?
A. No, sir.
Q. How long have you been working for the Tennessee Coal, Iron & Railroad Company?

A. I started working for them February 8th, in 1937.

Q. How old are you?

A. Twenty-four.

Q. Where were you born?

A. Pratt City.

Q. How high did you go in school?

A. About the ninth grade.

Q. Where do you work?

A. Muscoda, Number Six.

Q. What kind of work do you do?

A. Well, I have been working on a timber crew and trip rider.

Q. How, at Muscoda Number Six, do you get down in the mine?

A. On the skip.

Q. Can you walk down? Are you allowed to wadk down in Muscoda Number Six, or do you have to ride a skip?

A. You can walk, I guess. I never walked. I rode the skip.

Q. Now, what time, from October, 1938 up to May 1, 1941,—what time did you report for work in the morning?

A. Well, sometime I had to go to the supply house and I would turn in my check number to the board—carry it up to the tally house from five-thirty to six o'clock.

Q. Five-thirty up to six o'clock?

A. Yes, sir.

Q. And what time, during those three years, from October, 1938, to May 1, 1941, would you get your brass check at the end of your shift?

A. Well, sometimes it would be three-thirty, twenty minutes to four, fifteen minutes until four, something like that; all depended on what skip we catch.

Q. All depends on what?

A. What skip we catch.

Q. How many—is that the kind of skip that is used out at Muscoda? (Exhibiting picture to witness.)

A. Yes, sir.

Q. Talk a little bit louder please, Mr. Giglio?

A. Yes, sir.

Q. Is that skip—is that the sort of skip you and the men at Muscoda Number Six have been reiding out of the mines on from October 24, 1938, up until May, 1941?

A. Yes, sir.

Q. How many men—

Mr. Burr:

Have you identified that? Are you going to offer it in evidence or not?

Mr. Harris:

It is the same one.

Mr. Burr:

It is the same one?

Mr. Harris:

Yes, sir.

Q. How many men would ride ordinarily in that skip going down into the mines?

A. They would ride around 35 or 40.

Q. How many coming out?

A. About the same.

Q. In riding down into the mine or coming out of it in that skip could you stand erect, or did you have to bend or stoop, or did you have to squat?

A. You had to bend going down to get clear of the roof.

Q. To get clear of the roof?

A. Yes, sir. There were places you can stand.

Q. Some places you can't stand?

A. Yes, sir.

Q. Have you ever during the last three years ridden down in that skip when anybody in the skip with you was hurt?

A. Yes, sir.

Q. When was that?

A. I think it was July 15th.

The Court:

What year?

The Witness:

This year, '41.

Q. On July 15th this year?

A. Yes, sir.

Q. Were you going down in the mine or coming out of the mine?

A. Coming out of the mine at the end of a shift.

Q. Who was the man that was hurt?

A. I think it was a Payne boy.

Q. Payne boy?

A. Yes, sir.

Q. How close was he to you?

A. He was right in back of me.

Mr. Burr:

Your Honor understands we have our usual objection to this line of testimony?

The Court:

Yes, sir.

Mr. Burr:

We except. It happened on July 15th this year.

The Court:

July 13th?

Mr. Burr:
15th, I understood him to say.

Mr. Harris:
July 15th.

The Court:
That is what I understood him to say. I thought you said 13th.

Mr. Burr:
15th.

—

Q. Was he holding to you?
A. I was up against him. When he fell out he fell up against me.

The Court:
Talk louder.

A. When he got hit he fell against my shoulder, and the fellow next to me says, "Is he hurt?" I asked the boy if he was hurt and he didn't give me no answer. I told the fellows next to me to give him more room; he was hurt.
Q. Was that coming out of the mine?
A. Yes, sir, at the end of the shift.
Q. Coming out at the end of the shift on the way to get your check at the tally house?
A. Yes, sir.
Q. Did you notice after you got up out of the mine—did you look at him?
A. Yes, sir.
Q. Where had something in the slope hit him?
A. Well, he got hit on his forehead. It was bleeding.
Q. Was he unconscious when you—
A. Yes, sir.

Q. —when he got up there?

A. Yes, sir. We brought him in the tally house and called an ambulance.

Q. During the three years you have been at—out at Muscoda, the whole time,—I mean from October, 1938 to May 1, 1941, on those trips going in and coming out on the skip were the conditions any different, so far as you know, from what they were on July 15th this year?

A. No, sir.

Q. Have you seen Mr. Payne in Court since you have been up here today?

A. No, sir.

Q. Do you know whether he is still in the hospital?

Mr. Burr:
We—

A. I think he is in the hospital. I am not sure.

Mr. Harris:
You can take him.

Cross Examination.

(By Mr Burr):

Q. Tony,—that is your name, I believe?

A. Yes, sir.

Q. You don't mind me—I can call you that name better than I can the other, and I knew you wouldn't mind.

A. No, sir.

Q. How long have you been working for the Tennesee Company?

A. I started about four years ago.

Q. Been riding this skip all the time?

A. Yes, sir.

Q. Going in and coming out every day?

A. Yes, sir.

Q. The same kind of skip?
A. Yes, sir.
Q. You say you were present when Mr. Payne got his head hurt?
A. Yes, sir.
Q. This was on July 15th?
A. Yes, sir.
Q. The month we are in now?
A. Yes, sir.
Q. How many were on that skip, if you don't mind; just your best judgment?
A. I figure around 35 or 40.
Q. You didn't count them?
A. No, sir.
Q. Just taking a wild guess at it?
A. Yes, sir.
Q. Anyhow, it was about the usual skip load for coming in or coming out?
A. Coming out.
Q. Do you always ride in with Payne?
A No, sir.
Q. You don't know who you are going to ride in with?
A. No, sir.
Q. Or come out with?
A. No, sir.
Q. That is the way you always do; just catch the skips as they run?
A. Yes, sir.
Q. If you wanted to you could catch the first skip?
A. Yes, sir
Q. And if you wanted to there was a later one?
A. Yes, sir.
Q. Of that 35 or 40 he was the only one to get his head hit?
A. Yes, sir.
Q. He got hit because he raised his head up and touched it on the roof?

A. Yes, sir.

Q. If he had kept his head down he wouldn't have gotten hit?

A. No, sir.

Q. You didn't get hit?

A. No, sir.

Q. No one else got hit?

A. No, sir.

Q. It is an electrically lighted skip?

A. Sir?

Q. Electric lights up and down there?

A. Yes, sir.

Q. No one else got hurt?

Mr. Harris:

He has asked him that.

The Court:

Yes, sir.

Mr. Burr:

I wanted to be certain. I haven't taken much time, your Honor. I am getting along mighty fast.

The Court:

Go ahead.

Q. That is the only time you saw anybody get hurt on that skip?

A. Yes, sir, that is the only one I ever saw. I heard—

Q. We don't want to get into what you heard. You haven't seen any?

A. No, sir.

Q. And you have been riding back and forth all the time?

A. Yes, sir.

Q. You don't know how badly Payne was hurt? You haven't seen him since?

A. No, sir.

Q. You say you could walk down the slope if you wanted to, but you preferred to ride, didn't you?

A. Yes, sir.

The Court:

Did he say that?

Mr. Burr:

Sir?

The Court:

Did you say you could walk down there if you wanted to?

The Witness:

I said they didn't allow us to walk down there, but you could walk if you wanted to.

The Court:

Don't allow you to?

The Witness:

No, sir, but ride the skip down. But I say I have walked on the slope, and have walked down—

Q. Have walked down on the slope to the place where you were working?

A. Yes, sir. I worked on the slope track crew for awhile, and I have walked down on the slope to where we were working.

Q. It is the rule the men ride?

A. Yes, sir.

Q. They all ride?

A. Yes, sir.

Q. You say sometimes you commenced work—you said something that happened between five-thirty and six o'clock, sometimes you went to the supply house. What is that, Tony? I don't understand that.

A. Lots of times we would go down there, get our saw sharpened, get an ace, get some washers.

Q. You mean before you went to work you would go down to the supply house?

A. Yes, sir.

Q. And get your saws?

A. Yes, sir.

Q. Or axe?

A. Yes, sir.

Q. Something of that sort?

A. Yes, sir.

Q. When you did that you couldn't catch the six o'clock skip?

A. No, sir.

Q. You would catch a later skip?

A. Yes, sir.

Q. And get to the work place later than the other men?

A. Yes, sir.

Q. And your time—your pay time would start at six-forty-five in the mine; is that when it started?

A. Well, you see I had to check in, and I would give a fellow the check number to check me in and I would go by—

Q. You would go by and check in?

A. Or have somebody check in for me.

Q. What time—it didn't take long to leave your check?

The Court:

What did you do that for? What time did you do that?

A. I usually get to the bath house—

The Court:
What time did you get to the tally house?

The Witness:
At that time, before we went on this new time, about fifteen or twenty minutes of six.

The Court:
You say you would go get washers and saws?

The Witness:
Yes, sir.

The Court:
And you did that before you went to the supply house?

The Witness:
I got those at the supply house.

Q. By checking in all you did was leave your check at the tally house?
A. Or give it to a fellow.
Q. You didn't go by yourself but gave it to a fellow?
A. So they would know I was there.
Q. So they would know you were there?
A. Yes, sir.
Q. And then you would go down to the supply house?
A. Yes, sir.
Q. And get whatever you wanted to get?
A. Yes, sir.
Q. And then go to the slope and catch a skip and go down in the mine?
A. Yes, sir.
Q. And when you got there the men would be already there?
A. Yes, sir.

Mr. Burr:
That is all.

Re-Direct Examination.

(By Mr. Harris):
Q. When you told Mr. Burr a man could walk down that slope was it your meaning that it was not too steep to keep him from walking? Is that what you meant?
A. Yes, sir; what I meant, they could walk if they wanted to.

Mr. Burr:
There isn't any question—may it please the Court, there isn't any question but what they rode the skip.

The Court:
I want to ask him a question.

Mr. Burr:
Yes, sir.

The Court:
Is it against the rules for the men to walk down the slope?

The Witness:
Yes, sir, I think that is against the rules.

Mr. Harris:
That answers it. That is all.

Re-Cross Examination.

(By Mr. Burr):
Q. I want to ask you one question. When you go to the supply house to get things do you take them up in a truck?

A. Yes, sir, sometimes. I have taken them up in my car.

Q. You have got a car?

A. Yes, sir.

Q. There is a truck there you can take them up on?

A. Yes, sir.

Q. And you do do that?

A. Yes, sir.

Mr. Burr:

That is all.

(Witness excused.)

Mr. Harris:

Call Charlie McDaniel.

2577 CHARLIE J. McDANIEL, being called as a witness, and being duly affirmed, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. What is your name, please, sir?

A. Charlie J. McDaniel.

Q. How old are you, Mr. McDaniel?

A. Forty-four.

Q. Where were you born?

A. In Clay County near Goodwater, Alabama.

Q. How high did you go in school?

A. I went approximately two weeks.

The Court:

Went to school two weeks?

The Witness:
Yes, sir, when I was about eight years old.

The Court:
How old are you?

The Witness:
Forty four.

Q. What kind of work do you do?
A. I am head miner.
Q. For what Company?
A. Tennessee Company at Number 9 Mine.
Q. Number 9 Mine?
A. Yes, sir.
Q. Wenonah?
A. Yes, sir.
Q. How long have you been working under Red Mountain over here?
A. I went to work in 1923, the 16th of June.
Q. When you started to work what Company did you work for?
A. I worked for the Tennessee Company at Number 9.
Q. What kind of work did you do for that Tennessee Company, Mr. McDaniel, when you first went there?
A. I went to work as pipe man.
Q. Will you, in order to save time, just start and tell the Court the different kinds of work you have done in the mines and when you did that kind of work for the Tennessee Company?
A. It would be impossible for me to do that. I could give approximately—
Q. All right; approximately?
A. Well, I went to work in '23 as a pipe man. I worked as a pipe man for about four or five weeks, and they promoted me to a skip tender. I was on a skip tender about two or three months, and they put in mechanical loaders.

They put me on a mechanical loader as a drag runner, and I was on that job about, the best I remember, five or six months. I was made a skip tender at Number 10, and I went to work for the mine foreman at number 10, and I was there about five or six months and I decided I wanted a drag back, and I went to work for another mine foreman at another mine, Number 8. I was there just a few days and Number 8 shut down, and I was transferred to Number 7 as a mucker.

The Court:
That is another Division?

The Witness:
The same Division,—7, 8, 9 and 10 is all Wenonah.

The Court:
That is Wenonah?

The Witness:
Yes, sir.

I stayed at Number 7 two or three years, the best I can remember, and then they transferred me to number 8, and I was there about a year, and at that time they put me on as a section foreman. I believe it was in 1928. I was on as Section Foreman about eight or nine months. They put me on—in the reduction of forces they put me back down as skip tender, and sometimes in that length of time —I forget what year it was—they started Number 10 and they put me at Number 10 as Section foreman and I was there until that mine shut down in just a few months. The fact of the matter, I have been on pipe, drill helping, mucking, section foreman, track helping, and approximately everything in the mine.

Q. And how long have you been a head miner?

A. I have been a head miner since 1938. They named it head miner, it is the same as section foreman, but they changed the name under the incentive plan as head miner.

Q. What were you in 1933 when the Union began to be organized in this district?

A. I was skip tender.

Q. At which mine?

A. I was at Number 8 at that time.

Q. Did you become a member of the Union in 1933?

A. Yes, sir.

Q. Have you been a member of the union from that time on up to the present time?

A. Yes, sir.

Q. As a member of the Union have you served in official capacities for the union?

A. Yes, sir.

Q. When did you first become an officer of the union?

A. In September, 1933.

Q. And what office did you hold?

A. President.

Q. Of what union?

A. Wenonah 157.

Q. How long did you stay president?

A. Until some time in 1938; it was after October, 1938, —after we went back to work.

Q. Now, were you president of the union at the time the incentive plan was handed to the men?

A. Yes, sir.

Q. And were you a head miner then in 1936,—I mean a Section foreman?

A. Yes, sir.

Q. And out at Wenonah how many men constituted a crew before they put the incentive plan into effect, and how many men constituted a crew after they put it into effect?

A. In heading work there was a mine mancrew where you had two drills. Where there was one drill there would be an eight man crew—I mean a seven man crew where there was eight drills—I mean one drill.

Q. Was that before the incentive plan went into effect?

A. Yes, sir.

Q. Immediately upon the incentive plan going into effect, what constituted those two crews by numbers?

Mr. Burr:

That has been proven by us. There has been no denial of it. You can go ahead if you want to.

The Court:

Well, we have had a lot of cumulative testimony. Go ahead.

A. Well, after they started on that incentive plan, where there were two drills there was a foreman and six men. Where there was one drill they cut off one man.

Q. Now, you had a strike in 1936, didn't you?

A. Yes, sir.

Q. When the men went back to work in 1936, did you go back to work?

A. No, sir.

Q. How long was it before you went back to work for the Tennessee Company?

A. It was in October, 1938.

Q. Was that after a settlement, money settlement of claims with the Tennessee Company?

A. Yes, sir.

Q. Now, were you one of the undesirables in that settlement?

A. Yes, sir.

Q. Did you attend any meetings on that settlement either here or anywhere else?

A. I attended a meeting in Chicago and Washington.

Q. Now, when you went to Chicago—do you remember what month it was when you went to Chicago?

A. August or September. It was just before we went back to work. We went to work in October, and it was

just a very short time we went to work after we was in Chicago.

Q. Now, where did you meet in Chicago, and who was there representing the Tennessee Company and the United States Steel Corporation?

A. We met in the Palmer Building.

Q. Palmer Hotel or Palmer Building?

A. Yes, Palmer Hotel. I think it was a Mr. Vance—he was the Labor Relations something—in other words, Mr. Vance of the Tennessee Company and Mr. Moseley, the Vice President of the Raw Materials, I understood, and there were two men there I never met before. I understood they were lawyers.

Q. For the company?

A. For the company.

Q. At that Chicago meeting was a contract signed of not?

A. No, sir.

Q. Was there a stipulation signed there?

A. In Chicago?

Q. Yes.

A. No, sir.

Q. After leaving the Chicago meeting, where did the Union representatives go?

A. To Washington.

Q. Was there a contract signed in Washington?

A. No, sir.

Q. Was there a stipulation signed in Washington?

A. Yes, sir.

Q. And was that stipulation a stipulation dealing with the undesirables and putting them back to work?

A. Yes, sir.

Q. Then was the contract signed after the stipulation?

A. It was signed here in Birmingham.

Q. All right. Did you—You did not bring the contract back to Birmingham already signed?

A. No, sir.

Q. Do you recall about how long it was after you got back to Birmingham before the contract itself was signed?

A. I don't know exactly, but approximately thirty days, I would think it was. It was very shortly.

Q. And where was it signed?

A. It was signed in the Brown-Marx Building.

Q. Do you know whose office it was signed in?

A. I am thinking it was Mr. Vance's at the time. I don't know whether it was Mr. Kelly's or Mr. Vance's, but it was in that office.

Q. Now, when you went back to work after this two-year lay-off you had, did you go to work as a head driller—head miner?

A. I went to work as a head miner.

Q. Been doing that ever since?

A. Yes, sir.

Q. Have you been head miner in one particular mine ever since October, 1938?

A. No, sir,—

Q. Well, have you moved back—

A. No, sir; they put me back in Number 11 mine at Ishkooda Division, and I was there about two years, and I was transferred to Number 8, and I was there three or four months, and then I was transferred to Number 9 and I am at Number 9 now.

Q. Have the mines, since October, 1938, been running on a five day week in the Birmingham district?

A. No, not all the time. In 1939 they went down as low as two days a week.

Q. How long did they stay as low as two days a week?

A. Through the summer, several months, and also in 1940 they went down in the summer to two or three days a week.

Q. The rest of the time was it on five days a week?

A. Yes, sir.

Q. And were the shifts eight hours or something else during that period?

A. Eight hours.

Q. Now, were you working in the mines when they were on a ten-hour shift?

A. Yes, sir.

Q. When they were on a ten hour shift what time did you report for work at the mine? If you were on the day shift, what time did you report for work at the mine?

A. Around six o'clock.

Q. Hand in your check? Did you have to hand in a brass check?

A. Yes, sir.

Q. Has that been true of every mine of the Tennessee Company you worked for, that you handed in a brass check?

A. Yes, sir.

Q. And what time of day—when you were on a ten-hour day shift, what time of day did you light your fuses?

A. Around 4-10.

Q. Now, when you were on an eight hour shift, what time of day,—I am talking about the day shift,—did you check in and leave your brass check at the tally house?

A. Around six o'clock.

Q. And on the eight hour day up before May 1st this year, what time of day did you light your fuses?

A. At 4:10. On the eight hour you said?

Q. On the eight hour shift.

A. 3:10.

Q. What time did you light on the ten hour day?

A. I got confused on that. 3:10 was on the eight hours and 4:10 on the ten hours.

Q. All right. And after you lighted your fuses—

The Court:

When do you start on eight hours?

Mr. Harris:

Six o'clock.

Q. The starting time, as I understand you—

Mr. Burr:

He said he went in the mine at six o'clock.

Q. The starting time when you reported for work was six o'clock both on the eight hour shift and ten hour shift?

A. That is right.

Q. And the present time—

The Court:

Where were you when you reported?

The Witness:

At the tally house.

The Court:

That is when you gave him your brass check?

The Witness:

That is up until this here May 1st went into effect. You could go to checking in a lot of times before six o'clock. We would go in and hang up our numbers,—the white men did. The white men, a lot of them, go in the tally house and hang up their numbers, and especially the head miners.

Q. That was before six o'clock?

A. Yes, sir, but they stopped that after May 1st.

Q. When you were on a ten-hour shift, the man trip started down at what time on the day shift?

A. They would run a safety when the six o'clock whistle blowed, and then around six o'clock—approximately five minutes after, they would run a man trip.

Q. Now, on the eight hour day, what time did the first man trip go?

A. The same way. After May 1st—

Q. We are not worrying about May 1st. Let's not get into May 1st now.

A. All right.

Q. I am talking about the time prior to May 1st.

From October 24, 1938, up to May 1, 1941, in both cases, the last thing you do at the face is to light the fuses and then you get out?

A. Yes, sir.

Q. Now, was there any difference in the length of time it took the company to get you out of the mines when you were on a ten-hour shift, and the length of time it took them to get you out of the mine on an eight hour shift?

A. I don't know of any difference.

Q. Now, has there been any difference as to the speed with which you move from the tally—from the mouth of the mine to the working face since May 1, 1941 and the three years prior to that time?

A. They run the safety drag now before six o'clock, and as soon as a skip load can check in, which will take a minute or a minute and a half, somewhere around that, a minute or two minutes,—as fast as they check in they load the skip.

Q. Do the skips run at the same speed they did before May 1st?

A. If they have speeded up any, I can't tell it.

Q. Now, in your work as head miner from October 24, 1938, to May 1, 1941, did you, before getting on the skip to go down into the mine, check in your men or receive their checks or report to the assistant mine foreman or do anything else before you caught the skip, the man trip going down?

A. Before May 1st?

Q. Yes.

A. When I was at Number 11 I would take the men's numbers sometimes, and sometimes they would hand them in to the assistant mine foreman.

Q. All right. Now, at the other mines, how about it?

A. Well, at Number 8 the Section Foreman don't have nothing to do with checking the men, or rather, at Number 9.

Q. Who checks them in—I believe—

A. It is either—I think the mine foreman—

Mr. Burr:

If he doesn't know—

Q. If you don't know—

A. I am thinking it was the mine foreman at Number 8, and I know the mine foreman checks them in at Number 9.

Q. At Number 9 do the men carry any tools or any implements with them down on the mantrip other than their electric light? Are electric lights used there?

A. No; they have carbide.

Q. Carbide?

A. I don't believe I have seen but one man carrying anything down on the skip on the inside of the skip since I have been there, but I have seen men carrying some stuff down on the bail.

Q. What is the bail?

A. It holds the door of the skip shut. When you pull it up it stands up and lets the door come open.

Q. It makes a kind of trough where you can put tools or anything—

A. No, sir; the man just holds it with his hand. There is no trough on it.

Q. Out at Wenonah Number 9, did the men, during the time you were working there, start the mantrip down or did some officer or representatives of the company start the mantrip down?

A. The skip tender would run the safety drag and then when the—the first man trip, the assistant mine foreman rides. He rides this chair on the back of the skip.

Q. Well, when you get to the man unloading station, how far was it from the man unloading station at Number 9 to the place where you actually drilled while you were out there?

A. I have worked in two places since I have been there.

Q. All right; give each one of them.

A. In the first one I would estimate it around a thousand or maybe 1500 foot.

Q. All right; how—

A. In the place I am in now,—well, it is three or four hundred foot,—five hundred foot—three or four hundred foot closer.

Q. Now, at Wenonah do you use the drills that are operated by compressed air?

A. Yes, sir.

Q. Where do you get your oil?

A. At the tool house; the men does.

Q. Well, where is that tool house?

A. It is about 400 foot from the loading station.

Q. The man unloading station?

A. Yes, sir.

Q. And do they get that as they are on their way from the man unloading station to the heading or stope where you are working?

A. Yes, sir, practically all the time.

Q. What about wedges and hangers or hackhammer steel at Wenonah?

A. You want it how or—

Q. Up to May 1st; I want it—

A. Up to May 1st?

Q. Yes.

A. You would get them at the tool house as you go down.

Q. Where was that?

A. The same place as the oil house.

Q. Underground?

A. Oil house and tool house at the same place.

Q. As you go down?

A. Yes, sir.

Q. You would get them as you go down?

A. Yes, sir.

Q. Did the men carry them in their arms, or would they be hauled up on tram cars, or how?

A. They would carry it in their hands until they—hangers or bars, carry them on their shoulders until they got in the headings. It was against the rules to carry them on your shoulders in the headings.

Q. What was the reason for not carrying them on the shoulders? Aside from the rule, what was the reason?

A. Well, the trolley wire,—they were afraid you might contact it with the trolley wire.

Q. Do you know how many volts that trolley wire carried?

A. No, I don't.

Q. Well, from October, 1938, to May 1, 1941, at both the mines,—all three of the mines you worked at, was that method of getting the things up to the working face substantially the same?

A. Yes, sir.

Q. Now, after the men had finished drilling and had started out of the mine, did they, during those three years from October, 1938, to May 1, 1941, carry any of those same tools back to the tool house with them?

A. No. A hanger is not—when they get through with a hanger, it is broke or bent so it can't be used any more. Maybe the point is broke off and it can't be used any more. The same thing with the wedges. The jackhammer steel—the men were supposed to carry that back and swap it for a sharp one at the tool house. The bars had to be carried back to be sharpened.

Q. Now, in mining—in drilling, what, in your judgment is the air pressure that is needed for efficient operation in the iron ore deposit in this district?

A. Well, it is just according to how the company is wanting ore. If they are wanting lots of ore, the more air they give you the more ore you are going to get, and if your air runs around 80 or 90 pounds, you will get more drilling than when it is around 40 or 50. When all the drills get started in the day, that slows your air down. I have seen it where your drills would hardly rotate, and you would drill only five or six holes to one drill. You see when you have got good air and you are drilling in a heading, I have drilled in this short time we have got now, from 12 to 13 or 14 holes.

Q. Now, what is the difference between development work and narrow work—I mean and stope work?

A. Well, the narrow work—development work is a place you are—in a man way we usually drive them 14 foot and a haulage way varies, owing to the condition your ground is in, from 12 to 14 foot. You might get a little bit over, but they usually drive them around 14 foot, and a heading is drove 20 foot.

Q. Well, can a drill crew with the same kind of drills and mechanical loaders produce more ore in narrow work than it can in the heading or stope or is it the other way around?

A. Oh, a man can't break a third hardly as much ore—he can't break a third as much ore in a 14 foot place as he can in a stope with the same amount of holes.

Q. In other words, the same amount of drilling will produce more ore in the stope than it will in the narrow work?

A. Oh, naturally.

Q. Have you had any conferences with the officials of the Tennessee Company during the time you have been an officer of the company other than the Chicago trip,—an officer of the union,—other than the Chicago trip and the time you signed the contract with Mr. Vance?

A. Yes, sir.

Q. What committees were you on that caused you to have those conferences?

A. Well, I served on the committee called Local Committee, to take it up with the Division Superintendent, grievances, and then I served on the general committee to take up cases when they were not handled satisfactorily with him with the general superintendent, and the committee on negotiating contracts, they used the same general committee.

Q. Did you have discussions with these officers of the Tennessee Company, or did you put everything in writing and have no discussion?

A. You mean the grievances or the contracts?

Q. The contracts. I am not worrying about the grievances.

A. Well, now, we would put it in writing to start with, and naturally we would discuss it with them, and then maybe come with a counter proposal, and sometimes it was just—just oral.

Q. Now, when, so far as you know, was the first time you participated in any discussions with the Tennessee Company asking for pay for what is called in this case portal to portal or collar to collar, or pay other than on a face to face basis? When was the first time, so far as you recall, that discussions betweeen the union and the officers of the Tennessee Company began on that subject?

A. 1934.

Q. And who were those discussions with?

A. The first one was with Mr. Gregg.

Q. Mr. Gregg?

A. The president of the Tennessee Company.

Q. And what did the union ask at that time?

A. We asked for six hours in the first proposal we made to him, and then we—they refused that,—and then we compromised with him on seven hours and travel time one way.

Q. They agreed to put you on a seven hour shift, and pay you traveling time one way, or do you mean you made them an offer of that?.

A. We made them an offer of that.

Q. Well, what did they do with that?

A. They didn't accept that.

Q. They didn't accept that?

A. No, sir.

Q. Then, when was the next time that the matter was taken up with them?

A. In 1935.

Q. Who did you take it up with then?

A. We taken it up with Mr. Gregg.

Q. What did the Union ask then?

Mr. Burr:

I would like for Mr. Harris to inquire whether or not what they presented at that time was in writing or not,—

Mr. Harris:

I will.

Mr. Burr:

So I will know whether or not to make my objection.

Q. In 1935, was the union request in writing?

A. It was.

Q. It was?

A. Yes, sir.

Q. And then when was the next time after 1935?.

A. In 1936.

Q. Was that request in writing?

A. It was.

Q. And then when was the next time, the next one?

A. That was the last one.

Q. In 1936, after the strike was over and the men had gone back to work, did you continue to be a member of the union while you were not at work?

A. Yes, sir; I was president right on.

Q. Did you discharge your duties as president right on; I mean you attended—

A. I did.

Q. Now, how about the membership of your union after the incentive plan went into effect? Did it increase or decrease?

A. Oh, it decreased. It got to the place where I didn't have no grievances to take up.

Q. What do you mean—

A. They all turned into the company union.

Q. And how long was it—you didn't have anything to take up; they all turned into the company union?

A. I made a statement they all—practically all.

Q. How long did that condition last?

A. It lasted until 1938 when we went back to work.

Q. During that period, in your union, how did the attendance, in numbers, of men compare at the meeting with what they were before this strike was over?

A. Give me that question again.

Q. Well, I mean your attendance at the meetings prior to the incentive plan, and your attendance at the meetings after the incentive plan, how did it compare?

A. Oh, I would estimate there was 75 or 80 percent more men who was attending the local before the strike than there was attending about four or five months after the strike.

Q. Now, when you said a while ago that you had no grievances during that period of '36 and '37, and up until you went back to work in 1938, did you mean that you had no members to speak or to have grievances for; is that what you meant?

A. I meant we had very few, and the ones we did have were scared to make a grievance.

Q. Oh. How many—as you recollect, how many men were there on the undesirable list?

A. There was close to 200 that was left off, but they didn't all of them file charges against the company to go back to work.

Q. How many of them went back to work; do you know?

A. Around 150. I don't know exactly.

Mr. Harris:
You can take him.

Mr. Burr:
Judge, it is adjourning time now.

The Court:
Well, let's go on.

Mr. Burr:
I would have to split it, Your Honor. I would rather come back earlier, if you will allow me to. I have made a dinner engagement I would like to keep if it is not inconveniencing the Court.

The Court:
I had planned to adjourn at 12:15.

Mr. Burr:
Well, we can come back fifteen minutes earlier.

The Court:
We will adjourn now until 1:30.

(Whereupon, at 12:00 o'clock M., July 25, 1941, a recess was had until 1:30 P. M. of the same day.)

After Recess, 1:30 P. M.

2597 CHARLEY J. McDANIEL thereupon resumed the stand, and testified further as follows:

The Court:
All right, Mr. Burr.

Cross Examination.

(By Mr. Burr):

Q. Mr. McDaniel, I believe you have been working for the Tennessee Company off and on pretty well continuously since June, 1923; was that the date?

A. Yes, sir.

Q. And you have worked at the various jobs that you have told us about—

A. Yes, sir.

Q. Over that period of time?

A. Yes, sir.

Q. And I believe you said that when the union was organized and you joined it in August, 1932, I think you said, you were skip tender?

A. Yes, sir.

Q. Is that right?

A. Yes, sir, that is what I was.

Q. And when—just before the strike of 1936 you were a section foreman, I believe you said?

A. Yes, sir.

Q. And then after you came back in 1938, you came back as a head miner?

A. Yes, sir.

Q. Which is the same job under the incentive plan that the section foreman used to be under the old system?

A. Yes, sir.

Q. Since 1938 you have been at Wenonah all the time, have you?

A. No, sir.

Q. You were down at Ishkooda?

A. I was at Ishkooda a while.

Q. At Ishkooda a while?

A. Yes, sir.

Q. You have been at Wenonah most of the time?

A. No, sir. I was at Ishkooda most of the time.

Q. The conditions you told Mr. Harris about this morning, the method of handling the skip and so forth,—

A. Yes, sir.

Q. —and working,—

A. Yes, sir.

Q. —so far as you know, they were about the same at most of the places?

A. Yes, sir.

Q. Now, I want to ask you first about the ten hour day and eight hour day. They went on the eight hour day in 1933?

A. Yes, sir.

Q. Previous to that time—just previous to that time they were on the ten hour day except for a short time they were on nine hours?

A. I don't remember the nine hours.

Q. Well, I will confine my questions to ten hours.

A. Yes, sir.

(By Mr. Burr):

Q. Now, you recall testifying when Mr. Pressman was here and had the hearing here in this same room?

A. Yes, sir.

Q. I will ask you if Mr. Pressman didn't ask you these questions, and I will ask you if you didn't make these answers, and I will ask you if they are not correct now:

I am not asking this for impeachment, but just to save time, because I think it is the same now.

"Question: Now, as far as the company men were concerned, how were they paid back about 1923?"

And you answered that, "They were paid ten hours per shift; started at 6:30 and ended at 4:30.

"Question: You say starting at 6:30. Did they go down or did the drag go down any earlier or any later than they do now?

"Answer: They start at the same time; they started at the same time then as they do now."

That is correct, isn't it? The drag started about the same time?

A. The drag started at six o'clock instead of six thirty.

Q. You said here 6:30.

A. If I am not mistaken, he was asking me as to the time our work started.

Q. That is what I am asking you now; the time you were getting paid for there, didn't it start at 6:30 and end at 4:30?

A. That is the way it was.

Q. In other words, you didn't get paid for traveling time then? You just got paid for the time you spent at work, not counting the traveling time?

A. We didn't get paid for the traveling time that I know of, except we were in there from the time we go in until we come back out. I don't know whether you would call it traveling time or not. I don't, absolutely.

Q. Well, I will ask you this: The trip went in about six o'cock just like it did up to May 1, 1941?

A. That is right.

Q. The skip generally went down a few minutes after six o'clock; they brought it out of the side track and made the test run like you testified?

A. That is right.

Q. And the men loaded then and went to their working places and walked and worked and came back and caught the trip out; the work time started at 6:30 in those days and ended at 4:30; is that right?

A. That is what I understood.

Q. That is what you understood?

A. Yes, sir.

Q. Under the eight hours, when they went to eight hours in 1933, they went down the same time, about 6:05, and your blasting time was at 3:10; under those conditions the shooting was at 3:10?

A. Yes, that is right.

Q. Then, after that time the men caught the skip and went out?

A. Yes, sir.

Q. And the work day, what you were paid for, now, I am talking about, ran from 6:45 in the morning until 3:15 in the afternoon?

A. That is on eight hours?

Q. Yes, sir.

A. That is right.

Q. And under the eight hours you had thirty minutes off for lunch?

A. Yes, sir.

Q. Under the ten hours you took lunch on your own time?

A. I guess you would call it your own time. One man ate at the time and run the job.

Q. I mean you took it on the company's time?

A. I guess it was the company's time. We didn't have no regular stopping time.

Q. You just ate when you could during the work period?

A. Yes, sir.

Q. Now, then, under the eight hour period this is true, is it not, that you testified when you testified here before, just reading your words,

"Work at the face actually starts at 6:45 when the company turns the power on. The juice is cut off at 3:10 P. M., as a signal to us to get ready to blast. At 3:15 the shift ends, and the first man trip starts up. The last men reach the surface about ten minutes to four, maybe a little later than that."

Now, is that about the way it was under the eight hour system?

A. That is right.

Q. That is right. Now, to get back to the time—about your blasting time, Mr. Pressman asked you these questions and you made these answers—

The Court:
Mr. Burr,—

Mr. Burr:
Yes, sir.

The Court:
I am not going into that. You cross examine the witness according to his testimony.

Mr. Burr:
All right, sir. I thought that was the quickest way to do it.

The Court:
You say you don't introduce it for the purpose of impeachment?

Mr. Burr:
No, sir. I do it to get through quicker.

The Court:
I think it will take up longer.

Mr. Burr:

I don't think it will. I think I have gotten through with those two things pretty quickly.

The Court:

If it will expedite it—

Mr. Burr:

I think it will.

The Court:

All right; go ahead.

Mr. Burr:

I can do it the other way, if you wish.

The Court:

I was just thinking it will take longer.

Mr. Burr:

No, sir, I don't think so. I will ask it this way, though.

Q. Mr. McDaniel, when you went on the eight hour day, when did your blasting begin?

A. When we were on the eight hours?

Q. Yes.

A. At 4:10.

Q. Now, when you were on the eight hour day—

A. Just a minute. When we went on eight hours?

Q. While you were on eight hours.

A. Well, we blasted at 3:10 while we were on eight hours.

Q. I didn't—

A. I had ten hours in mind.

Q. I didn't catch you saying it myself or I would have corrected you myself.

It was at 3:10,—you blasted at 3:10 on the eight hour day?

A. That is right.

Q. When you were on the eight hour day, what time were you supposed to start work at your working place or working face, whatever you called it?

A. When the lights went on?

Q. That was a quarter to seven?

A. Yes, sir.

Q. You determined the time to start to work by when the generator went on; is that the way you determined it?

A. That is the time we started producing.

Q. That is what I mean. And the juice went on at what time?

A. 6:45.

Q. 6:45?

A. Yes, sir.

Q. Now, the men who catch the first drag in, do they regularly or automatically get the first drag out?

A. No, sir.

Q. Well, do they—there is no specified drag you ride in either going in or coming out?

A. No, sir.

Q. Catch the one you get on?

A. The first men there catch the first one coming out.

Q. Catch the first one coming out?

A. The men at the loading station catch the first skip unless it is a head miner. Sometimes they let them get by. They have three lines of men at the Number 9 loading station.

Q. Don't the head miners and drill runners have to stay the longest in the places to help shoot?

A. Yes, sir. The drill helpers do stay there in most of the places.

Q. About how many of your crew are involved in the shooting?

A. There are only two,—it is the same amount. When there are two drills—they don't keep the helper there when there are two drills. When there is one drill the helper has to stay there. I am talking about my place.

Q. At your place—

A. I have only one drill man. The drill helper has to stay there.

Q. I am talking about your place; the drill man and the helper—

A. Not all the time. Sometimes I have two drill men.

Q. Sometimes you and the drill man stay to do the shooting?

A. Yes, sir.

Q. And the others leave? They are through before you shoot?

A. After we holler for the drill men to light, the other men leave the heading now.

Q. That is what I say.

A. Yes, sir.

Q. So they get down to the hoodlum always before you do?

A. Yes, sir.

Q. Now, as I understood you, you said when you were at Number 11,—when you worked there, sometimes you would deposit the checks of the men in your crew, some of them, for them?

A. That is right.

Q. But you said at eight and nine you had nothing to do with depositing the men's checks?

A. Yes, sir.

Q. Is that right?

A. That is right.

Q. Each man deposits his own check?

A. Yes, sir.

Q. And that has been customary all the time you are talking about?

A. Since I have been back the last few months.

Q. Eight and nine—I am not talking about the last few months. I am talking about prior to May 1, 1941.

A. That is right.

Q. That is the only period I am asking you about.

You say at Number 9 you have only seen one man carrying anything down in the skip?

A. That is all I remember. I saw one man carrying some jackhammer steel.

Q. Carrying some jackhammer steel?

A. Yes, sir.

Q. Do you know when that was?

A. I don't remember exactly, no, sir.

Q. Just your best—

A. It has been in the last two or three months.

Q. You say occasionally you have seen some of the men set something on the bail—that is a little place on the front of the skip or rear of the skip?

A. The bail is on the front.

Q. But you have seen occasionally some of the men holding in their hand—What kind of supplies was that? Was it some hammer—hammer steel?

A. I have seen the electricians carry down some stuff and I have seen—

Q. Wait a minute. That is an underground man?

A. Underground electrician.

Q. He is not a member of a producing crew?

A. Not a producing crew man.

(By Mr Burr):

Q. What have you seen him carrying down?

A: I have seen him carrying his electrician's—

The Court:

I don't think that is material.

Mr. Burr:

All right.

Q. Is that what you were talking about when you told Mr. Harris you saw some of them set something on the bail and carry something on the bail sometime?

A. Yes, sir, that is right.

Q. Now, the oil house is right at the tool house, I believe you said?

A. Just joining it.

Q. Just joining it?

A. Yes, sir.

Q. Now, did the men over there at Wenonah get the oil out of the oil drums; is that what they have there?

A. Yes, sir, they have drums, light oil, and one is the drag oil,—black oil.

Q. Are they in the same place?

A. Same place.

Q. Whenever oil is needed they get it in gallon cans?

A. Some few places have gallon cans. Most of the places have a quart or half gallon can.

Q. What did your crowd use?

A. At the present time—

Q. Not now.

A. Practically all the time we have had a quart or half gallon can.

Q. A quart of half gallon can?

A. I won't say which one. It is between the two sizes, I am thinking.

Q. You say the men would stop at the pump or oil drum and get their cans filled?

A. On the way to work?

Q. Yes, sir.

A. Yes, sir.

Q. Did they bring their can up on the shift before?

A. The shift before—well, the opposite shift usually brings it up and leaves it there.

Q. Does he hide it or leave it there with the men?

A. I have seen them hide them. I have seen them—different mine foremen work different ways.

Q. Your men have brought them and sometimes have left them there, and sometimes hide them where they would be sure to get them the next morning?

A. I have seen them do that.

Q. The wedges and hangers and jackhammer steel, that is the other three articles you have seen carried on the way up to the working places the next morning?

A. Way up—it is the way down. It is the way down.

Q. To the working place is what I am talking about.

A. Yes, sir.

Q. Did you ever have to do that yourself or did your men do it?

A. If I could see my men they would do it, but I have picked them up myself.

Q. Occasionally?

A. Occasionally.

Q. But very seldom?

A. But very seldom. I put that on the men.

Q. You tell them to do it?

A. Yes, sir.

Q. You put it on them?

A. Yes, sir.

Q. You are, of course, the boss of them?

A. That is right.

Q. When you get the in the heading you give them directions and supervise everything they do, either the drill part of the crew or the loading part of the crew?

A. That is right.

Q. Neither the mine foreman or assistant mine foreman go up in the heading with you when you go in in the mornings?

A. No, not in the morning. They come in during the day.

Q. How often do they come in, about once a day? How often do they come in during the day?

A. At the present time?

Q. Prior to May 1, 1941.

A. You want at Number 11?

Q. Any mine you work in.

A. At Number 11 mine, I was in 63, and the assistant mine foreman would come through one morning and the mine foreman the next. He would usually get in my heading—I was the second place from the top, and he would usually get in my heading usually around eight or nine o'clock.

Q. All right.

A. At Number 9—Number 8, I was at one of the furtherest places away, and I don't know what time he would get in my place,—sometimes right about noon. At the present time, Mr. Scott—

Q. I don't care anything about the present time.

A. We moved up in another heading.

The Court:

Go ahead.

Q. At all times they came up there, you knew that during the day one of them would be there after the crew had gone to work?

A. Yes, sir.

Q. Whatever time they came, once a day they came?

A. Yes, sir.

Q. When they were not there you were the head man there?

A. Yes, sir.

Q. You gave instructions to your men?

A. Yes, sir.

Q. If you ran out of oil or material, would you send back to the oil house or the tool house to get some and bring it back?

A. Yes, sir. If the other crew hadn't carried the oil back I would send back,—had to do it.

Q. And—

A. I say send back,—if the drill man needed oil, he doesn't have to ask the head miner. I can send his drill helper.

Q. That is understood?

A. Yes, sir.

Q. And if you need wedges or hangers or jackhammer steel, you can send back for it?

A. We can send back for it, but that won't happen once in six months.

Q. But you can do it?

A. We can do it.

Q. The men pick them up in the morning—that is self-evident. There is no use asking that question.

A. One thing I didn't give you on that. At this time, but it is different from what it was,—

Q. I am not interested in what it is now.

The Court:

We are not going into what it is now.

The Witness:

I am talking about,—

The Court:

From May 1, 1941, we are not going into it.

The Witness:

About two months before May 1st, we changed.

Q. Well, if there was anything you wanted to say—

A. I want to say what you all want me to say. I don't care what I say.

Q. Well, if there was anything changed—

A. About March, I believe it was, or April, they stopped this tool house from opening. The mine foreman gave orders for not opening the tool house for about a couple of months before we went on this collar to collar, and about

two months we would ride the drag—the mine foreman at my place gave orders not to open this tool house about two months before we went on this collar to collar, and then after we went on this collar to collar, they started opening it again.

The Court:

When would it be opened?

The Witness:

After the first drag—

The Court:

I mean after he gave orders for it not to be opened, when was it opened?

The Witness:

6:45; after the juice came on. We would have to send back for hangers and wedges.

Q. I don't know whether I understand that or not. Let me see if I do. You mean about in March they wouldn't let the tool box be unlocked until 6:45?

A. That is right; about March or April.

Q. So, from March until they changed in May or April,—

A. May 1st.

Q. Until May 1st, they locked the tool box so the men couldn't get any of these supplies before 6:45?

A. That is right.

Q. So that the—when that happened then you would have to send the men back when you ran out after 6:45 or let them wait there until 6:45 to get it?

A. I wouldn't let a man wait there.

Q. You would send them back?

A. I would send them back if I had to have something.

Q. After they locked the tool box you would send them back during the shift if you needed anything?

A. Yes, sir.

Q. What you don't need—how much oil do you use a day in your place, or did you, prior to this time?

A. They usually use a can full a shift, fill their lubricator once. Sometimes, too, you have a lubricator that is out of fix,—too much oil going through. That will use more oil. Of course, if they have a gallon can, they won't hardly use it during a shift.

Q. Use about a gallon can on two shifts?

A. Something like that.

Q. So, where you have a gallon can, only one man would pick up the oil?

A. Yes, sir.

Q. The same thing is true of the jackhammer steel and wedges?

A. Maybe one man would get hangers and wedges and bars,—one man would get one bar.

Q. A bar wouldn't be sharpened but about once every two weeks?

A. Something like that. It is according to what kind of ground you are in.

Q. The wedges and jackhammer steel,—about how often do you get the jackhammer steel?

A. A man needs jackhammer steel after drilling at least two shifts. Sometimes we don't get them that often.

Q. When you get—

A. They require us to water our holes. You can't drill and water a hole. The jackhammer will not rotate.

Q. So you would need steel every two shifts?

A. Yes, sir.

Q. Of course, you didn't need a jackhammer so frequently?

A. A jackhammer is liable to last a year or maybe longer.

Q. That is kept in the place?

A. That is kept in the place.

Q. The hangers, about how often would you need hangers?

A. Well, it is just according to the kind of hangers you would get. At Number 11 they didn't make nothing like as good hangers as they did at Wenonah. At Number 11 they used a third more or twice as many at Number 11 as we did at Wenonah—

Q. Well, at Wenonah—

A. I judge they would get—I don't hardly know. It is all owing to the men you have on a block.

Q. I know.

A. You have a sorry man on a block, and he will ruin it, maybe, in a few minutes. If you have got a good man—

Q. I am just trying to get an average used by your crew?

A. About two hangers a week; I wouldn't be positive.

Q. The wedges were about as big as your hand?

A. No, they weren't as wide as three fingers; about as wide as two fingers, and thin.

Q. They also depended on how the men used them, whether they were wasteful with them or not?

A. Yes, yes.

Q. Of course, being the head miner of the producing crew, you tried to keep a supply of these light tools there if you could?

A. Yes, we would keep them there if we could. Sometimes we couldn't get them for the job.

Q. If you couldn't get them, if they were not there for the job, you would see the mine foreman and have them sent to you?

A. We would ask for what we wanted.

Q. Then he would issue a requisition and have them sent to you?

A. He would have them sent to the mine and we would get them.

Q. He would send them to you?

A. Get them at the tool house, get dope for the drills, hammer handles, pick handles, sometimes a hose pipe the men would carry it down. I don't know how many different things we handled that way.

Q. You handled those things that way and sometimes you would ask for them and they would be sent down during the shift?

A. Yes, sir.

Q. Now, I want to ask you a few questions about your experience on these grievance committees you told Mr. Harris about.

A. Yes, sir.

Q. Now, first, as I understand, you, first, in addition to being president of the union for the time you have told us, you were a member of the local grievance committee. That is the one that takes up the matters with the local superintendent?

A. Yes, sir.

Q. Then you also were a member of the general committee; that takes up things the local management can't settle, and also matters of negotiation of contracts and everything that applies in a general way to the mines?

A. Yes, sir.

Q. You were on these committees since 1933?

A. I was off a little while resting in 1938, but I have sat in all the negotiations about contracts we have had.

Q. I believe the first one you sat in on in which you made any suggestions to the company was in 1934. Were you present at the one in 1933 in Mr. Gregg's office when a committee of seven called on the president to present a number of requests? Were you on that committee or not?

A. I don't remember it.

Q. Can you look at Exhibit Number 5—

A. We met Mr. Gregg in 1933, but I don't remember—

Q. Look at Tennessee Exhibit Number 5 and probably that will refresh your recollection as to whether or not

you were present when those requests were made. Look at it and see if you were present when that happened.

A. I read mighty slow.

Q. Would you rather I would read it to you?

A. I will read it, but it will be slow.

Q. When you have read enough to answer the question, you can answer it, or read it all through, if necessary.

A. I don't remember.

Q. You don't remember that one?

A. No, sir.

Q. All right. This one here, Tennessee Company's Exhibit 6, is the one in 1934. I will ask you if this is the one you referred to as being the one in 1934 signed by M. C. Anderson and yourself?

A. I don't know, sir. I signed different ones. Let me see.

Mr. Harris:

Said what?

Mr. Burr:

He said he signed different ones and didn't know. Let him look at it and see if that is the one.

A. It is signed M. C. Anderson, C. J. McDaniel, and Jones.

Q. Well, it is dated in 1934?

A. 1934? Let me see it. I am positive I was on that in 1934.

Q. Was it Mr. Perry or Mr. Gregg that handled this one; do you recall?

A. No,—seems to me Mr. Perry taken over then.

Q. Mr. Perry in 1934?

A. I believe he had.

Q. Now, do you recall what the discussion was? Was the discussion in reference to this paper that you presented at that time?

A. Yes, sir.

Q. Well, now, do you remember that anybody said a word—

A. You said that paper. I am not positive that is the paper we presented, but we presented him a paper.

Q. Have you got any other papers you kept copies of?

A. No, sir.

Q. Have you kept them at all? Have you got the copies of the one you presented?

A. About all the papers I received was given to the Labor Board.

Q. I am not talking about those.

A. I am talking about copies we had.

Q. Have you got any at all?

A. I am not the president now.

Q. You didn't keep copies, I don't suppose?

A. Not of those, of the meetings up there, I didn't.

Q. Well, do you remember this paper I have just shown you? Do you remember it?

A. I remember presenting a contract to them in '34—

Q. Do you remember—

A. —and sitting there discussing the contract with the company.

Q. With Mr. Perry?

A. Yes, sir.

Q. Do you remember what was in that contract?

A. Well, I remember some of it. I don't know whether I remember it or not.

Q. What was in it?

A. I remember in the first contract we presented to the company we asked for six hours a day.

Q. When was that presented?

A. In 1934.

Q. To Mr. Perry?

A. To Mr. Perry or Mr. Gregg, whichever one was the manager—the president at that time.

Q. You asked for a six hour day?
A. Yes, sir.
Q. What else? The check off?
A. Yes, sir.
Q. What else in that same contract?
A. We asked for the check-off system.
Q. All right.
A. And I think it was ten cents raise. I am not positive,—I think it was ten cents raise.
Q. Did you ask for anything else?
A. We asked for Union recognition, I know.
Q. All right, sir. Is that all that was discussed that you can recall at that particular time?
A. At this particular time that is all that I would remember.
Q. When was the next one, in 1936? In 1935? That was 1934.
A. The next one was in '35.
Q. Sir?
A. The next one was in '35.
Q. I will ask you, please, sr. to look at Tennessee Exhibit 9—rather, 9-A,—look at that and state whether or not that is the one you presented in 1935, and presented it to Mr. Ball? You can look at the minutes if you wish to. Let's see if you were there. Yes, Mr. Charley McDaniel. Read the minutes, Mr. McDaniel, and then glance at that and see if that is the one you presented in 1935.

The Court:

Are you going to ask him to examine all your past minutes and everything?

Mr. Burr:

I am going to ask him if these are all he knows about. Mr. Harris—

The Court:
I think you had better let him get off and examine them and go on with another witness.

Mr. Burr:
I will be glad to do that.
You can come down.

The Court:
We will be all afternoon.

Mr. Burr:
Your Honor, I am certainly entitled to cross examine on what was brought out.

The Court:
You have a right to do that. Give him all you have got.

Mr. Harris, we will finish him when he looks those over.

Mr. Burr:
This will conclude my cross examination of him after he looks these over.

The Court:
Will you take up another witness?

Mr. Harris:
May I inquire—the reason I make this inquiry is to determine who I shall call as a witness,—How late does Your Honor intend to run this afternoon?

The Court:
Oh, 4:30 or 5:00.

Mr. Harris:
Well, I will take Ward Jefferson.

2621 WARD JEFFERSON (C), being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:
What is your name?

The Witness:
Ward Jefferson.

The Court:
How do you spell it?

The Witness:
W-a-r-d.

Mr. Burr:
Will you tell me what mine he is from?

(By Mr. Harris):
Q. What mine are you from, Ward?
A. Number 8 Wenonah.
Q. How old are you, Ward?
A. 43 years old.
Q. Where were you born?
A. Lowndes County, Alabama.

Mr. Burr:
What is his name?

Q. W-a-r-d J-e-f-f-e-r-s-o-n; is that right?
A. Yes, sir.

Q. How far did you get in school?

A. Through the eighth grade.

Q. How long have you been working for the Tennessee Company?

A. Between 23 and 24 years.

Q. What mines did you work at?

A. I worked at all four of them.

Q. You mean at Wenonah?

A. Yes, sir.

Q. Mines 7, 8, 9 and 10?

A. Yes, sir.

Q. For the period October 24, 1938, up to May 1, 1941, where were you working?

A. I was working at Number 9 for a short period.

Q. Well, during the last three years where have you been working?

A. Number 9 and Number 9.

Q. Which one was it you worked at for a short period? I didn't—

A. Number 9.

Q. Most of the time was at Number 8?

A. Yes, sir.

Q. Now, when you were working at Number 8 during the past three years, was the company running Number 8 on a five day week?

A. Yes, sir.

Q. What was the nature of the work you did at Number 8, Ward?

A. Head miner.

Q. How many men did you have under you from October, 1938, on up until May 1st?

A. One time six men and one time seven, with myself.

Q. You have mechanical loaders at Number 8?

A. Yes, sir.

Q. From October, '38, to May 1, '41, what time did you report for work on the day shift?

A. Fifteen minutes to six,—to six o'clock.

Q. Did you have brass checks—

A. Yes, sir.

Q. —at Wenonah, Number 8?

A. Yes, sir.

Q. Did you turn them in at the tally house?

A. Yes, sir.

Q. Then did you take those checks of the men in your crew or did each man hand in his own check?

A. Each man handed in his own check number.

Q. And after handing in your check number and before getting in the man skip, did you talk to the mine foreman or assistant mine foreman?

A. Yes, sir.

Q. Did either one of them or not give you orders or directions or instructions between the time you checked in and the time you caught your man trip?

A. They did.

Q. Was that a usual and ordinary thing, or unusual thing?

A. Well, it was pretty usual.

Q. Well, in going down on the mantrip at Wenonah Number 8, did you have anything to do with how the man skips would run, the trips would run?

A. No, sir.

Q. Who did the directing, if any directions were given, as to when the first man trip should go down?

A. The mine foreman or assistant mine foreman.

Q. Did the Tennessee Company have anybody to do the work of a skip tender at Wenonah Number 8?

A. They did.

Q. Did the skip tender ride the first skip down there or the second trip down there, or which trip?

A. Ride the first one.

Q. And in going down at Wenonah Number 8, did the men have any—did they stand up erect or did they crouch or bend over?

A. No, sir, they didn't stand up correct.

Q. What?

A. Didn't stand up correct.

Q. How did the men—what position did they get in in going down on the man trip?

A. How did they get in?

Q. I mean what position did they take after they got in?

A. Oh. They would be bending over sometimes, and on their knees sometimes.

Q. And at Wenonah Number 8, about how many men did it take to fill a man trip?

A. From 30 to 32.

Q. Did the men have anything to do with the operation of that skip after it started moving until it got to the man unloading station?

A. No, sir.

Q. Then at Number 8 after you got off at the man unloading station, tell whether or not you or the men in your crew picked up anything at any place about the man unloading station on your way to the face at the beginning of your shift?

A. You mean at the man unloading station?

Q. What?

A. You mean after you get off the skip at the man unloading station?

Q. What is that?

A. You mean after you get off the skip at the man unloading station?

Q. That is right.

A. Yes, sir, we would pick up the time sheet and sometimes the jackhammer steel at the unloading station—

Mr. Burr:

Not so fast.

The Court:

What is that?

The Witness:

All the time, every shift, I would have to pick up a time sheet, a book I keep the time in, and sometimes I would have a jackhammer bit we used, and some of my men or me would have to carry to the working place.

Q. Would there be anything you would take from the oil station or tool house at the man loading station up to the face?

A. Yes, sir, at the tool house.

Q. What would you get?

A. We would get jackhammer steel, bars, water fittings and wedges and hangers and oil and pipe.

Q. When you finished blasting and started out of the mine, did you or your men carry anything from the face?

A. Yes, sir.

Q. What did you carry out?

A. Oil can back to the tool house.

Q. Now, when you came out on your way out of the mine and you got to the hoodlum, was there anybody there to tell the men how to get on the skip or who to get on?

A. Yes, sir.

Q. Who was that?

A. The assistant mine foreman or foreman.

Q. Did the—did anybody give a signal for the skip to pull out after it was loaded?

A. Yes, sir.

Q. Who would give that signal?

A. The skip tender.

Q. And after you got to the top station, you and your men on the way out, as you were getting to the end of your shift, did you go anywhere to do anything or get anything after you got to the top?

A. No, sir.

Q. Now, what about your check that you put in at the beginning of the shift?

A. We had to check them out.

Q. You picked up your checks at the end of the shift?

A. Yes, sir.

Q. Now, since May 1, 1941, did you have the same check system there?

A. Yes, sir.

Q. You turned in a check?

A. Yes, sir.

Q. At the beginning of a shift?

A. Yes, sir.

Q. And picked up the check at the end of the shift?

A. Yes, sir.

Q. Did they have a time clock?

A. No, sir.

Q. For you to punch?

A. No, sir.

Mr. Harris:

Will Your Honor indulge me just a second?

The Court:

Yes, sir.

Q. Now, the skip that the men rode down in at the Wenonah Number 8, did that go on level ground?

A. No, sir.

Q. Did it go on an incline that was smooth, or was the incline itself up and down?

A. Up and down.

Q. And as they rode down in that skip, what effect did going up and down on these inclines have on the way the men were standing or their position in the skip?

A. Kind of jar them or shake them, I should say.

Q. Have you any idea or judgment as to how fast that skip traveled?

A. Well, if I was going to judge, I would say about twenty or twenty-five miles an hour, as near as my judgment can tell.

Q. How high, in your judgment, was the roof above the top of that manskip in the main slope? About how high would it average?

A. From six to twelve inches in places; some might be a little taller.

Q. I will ask you to look at this picture and see if that is the same kind of man skip you used at Wenonah?

A. Yes, sir.

Mr. Harris:

That is the same one that has been introduced.

Mr. Burr:

Yes, sir.

Q. Now, after getting off the man skip at the hoodlum in Number 8 going up to the face where the drilling was done by you and your crew, how far, in your judgment, did you have to walk at Wenonah Number 8?

A. I should say about a mile.

Q. Now, was walking at Number 8 in places—I mean could you walk erect all the way from the time you got off at the hoodlum until you got up to the drilling place?

A. No, sir.

Q. Was the walking level?

A. No, sir.

Q. Well, just describe to the Court what kind of walkways and the condition of the walkways that you and your crew traveled from the hoodlum to the drilling place?

A. It was rough. In the manway—that is what we traveled,—there were rocks two or three feet, and then filled in. And then driving the man way, they would leave bumps in there, some two to three feet. We would have to step over them and then up and down, some two to three feet.

Q. How about the roof in those man ways?

A. In places you would have to lower your head in going under to keep from bumping your head.

Q. How about climbing up hill and down hill going from the hoodlum to the drilling place?

A. That is pretty fine in places.

Q. It is what?

A. Pretty fine in places; some places you have to bow your head.

Q. Do you have to climb up any hills going from the hoodlum to the drilling place?

A. No, sir; it is going down hill.

Q. It is going down hill?

A. Yes, sir.

Q. When you lit your fuses and started out, you are climbing up hill that mile?

A. Yes, sir, all the way.

Q. Now, Ward, from October, 1938, up until May 1st, what time did the lights blink on at the beginning of a shift?

A. What do you mean? For coming on?

Q. What time did the juice come on at the beginning of the shift?

A. The juice would be on when I would get to my working place.

Q. What?

A. The juice would be on when I would get to my working place.

Q. You say you reported for work at six?

A. Yes, sir.

Q. And by the time you had ridden the man skip and walked that mile the juice would be on at that place?

A. That is right.

Q. Were you working at Number 8 when they were on a ten-hour shift?

A. No, sir.

Q. Were you working for the Tennessee Company at all when they were on a ten hour shift?

A. Yes, sir.
Q. Where were you working?
A. Number 7 mine.
Q. What time did you report for work then?
A. From 5—five minutes to six, until six o'clock.
Q. What time did you blast on the ten hour shift?
A. All the way from 4:10 to 4:20.
Q. And on the eight hour shift what time did you blast?
A. From 3:10 to 3:15.

Mr. Harris:
You can take him.

Cross Examination.

(By Mr. Burr):
Q. You say you have been working out there about 23 years?
A. Between 22 and 23 years.
Q. Been riding on the same kind of skips all that time?
A. Yes, sir.
Q. Been walking on the same sort of walk ways all that time?
A. No, sir.
Q. Been getting better the last several years, haven't they?
A. Not at the mine I work in.
Q. What?
A. Not at the mine I work in now. I work at a different mine.
Q. Have they gotten better or worse in the one you are working in?
A. Getting worse.
Q. What mine is that?
A. Number 8 Wenonah.
Q. What place are you working in at Number 8?
A. 143.

Q. Is that 143 right or left?
A. No, sir.
Q. Just 143?
A. Yes, sir.
Q. How long have you been working at 143?
A. Around seven months.
Q. How do you get to 143? You get off at the man-loading station and what haulage way do you use?
A. I walk the right manway.
Q. Walk the right manway?
A. Yes, sir.
Q. Any tracks on it or not?
A. Any tracks?
Q. Yes, sir.
A. Not on this side of the powder house.
Q. On the other side of the powder house?
A. Yes, sir.
Q. Do they use that to haul the ore down?
A. On the other side of the powder house.
Q. To the rotary dump?
A. Yes, sir.
Q. Was it electrically lighted?
A. Yes, sir.
Q. Was the main slope electrically lighted?
A. Yes, sir.
Q. Were you section foreman when the incentive plan came in?
A. No, sir.
Q. What were you doing?
A. Drill runner.
Q. What were you when the strike came on?
A. Drill runner.
Q. When you went back to work you went back to drilling?
A. Yes, sir.
Q. And have been made a head miner since?
A. Yes, sir.

Q. How long have you been a head miner?

A. A little better than two years.

Q. You say you have had six men sometimes and seven sometimes?

A. Yes, sir.

Q. Are your men white or colored?

A. All colored.

Q. You are the head man in your crew?

A. Yes, sir.

Q. When you go down in the skip—you say you report for work at six o'clock?

A. Yes, sir.

Q. That is when you turn your check in?

A. Yes, sir, five minutes to six and six o'clock.

Q. That is when you turn your check in?

A. Yes, sir, six o'clock.

Q. That is what you are talking about?

A. Yes, sir.

Q. Do you always get there for the first drag?

A. Yes, sir.

Q. You never do catch anything but the first drag?

A. Catch the second drag.

Q. You catch the second drag?

A. Yes, sir.

Q. The first drag leaves about 6:05 or 6:10?

A. About two or three minutes after six.

Q. The second drag leaves about seven or eight minutes after that?

A. Something like that.

Q. So you say you leave the top at what time?

A. About 6:10.

Q. And you get down—I understood you to tell Mr. Harris—how long does it take you to get down to your man loading station?

A. Well, about 6:12 or 6:14, something like that.

Q. You mean it takes two minutes to go down?

A. Two or three minutes.

Q. And it takes how long to get to your working place?
A. About fifteen or twenty minutes.
Q. About fifteen or twenty minutes?
A. Yes, sir.
Q. You spoke of getting to your working place after the juice is on?
A. Sir?
Q. You spoke of getting to your working place after the juice is on; that is what you just said?
A. The juice is on before I get there.
Q. The juice is on when you get there?
A. Yes, sir.
Q. You know as head miner it is your first job when you get there to see your place is safe?
A. Yes, sir.
Q. So your men can't go to work up at the face until you get there, can they?
A. No, sir.
Q. So, if the juice goes on at 6:45, we will say, what time do you get up there?
A. I get up there sometimes about ten minutes—
Q. Say ten minutes of seven?
A. Something like that.
Q. Sometimes as late as seven?
A. Well, on conditions.
Q. I don't care about the on conditions. Sometimes you get there as late as seven?
A. No, sir.
Q. Do you get there five minutes of seven?
A. It haven't happened yet.
Q. You get there ten minutes of seven?
A. Twelve to ten minutes of seven.
Q. Then you and the drill helper any anybody else that you call on go up to make the place safe?
A. Yes, sir.
Q. Then you and your drill helper go to boring holes in the face to shoot down the ore, and the other people begin

making ready the mechanical loader, putting the skidder block up and so forth?

A. Yes, sir.

Q. That is the way you work?

A. Yes, sir.

Q. And you work on then until in the afternoon when you get ready to shoot?

A. Yes, sir.

Q. You have a regular time for shooting?

A. Yes, sir.

Q. You shoot, about all of you, at a regular time; you shoot when the warning signal is given about 3:10?

A. About 3:10 or 3:15 when I shoot.

Q. The warning signal is given at 3:10?

A. That is the warning signal.

Q. And you shoot when the warning signal is given?

A. Yes, sir.

Q. After the warning signal?

A. Yes, sir.

Q. Who do you keep there with you to help you?

A. The drill man and drill helper.

Q. The rest of them go down to the hoodlum?

A. Yes, sir.

Q. When do they leave?

A. When the lights wink.

Q. When does the lights wink?

A. At 3:10.

Q. They leave at 3:10?

A. Yes, sir.

Q. The only work they do from 3:10 on, if you call it work,—we will call it that for the purpose of this question,—one of them carries an oil can?

A. Yes, sir.

Q. That is an empty oil can?

A. Yes, sir.

Q. He takes it down and leaves it and picks it up the next morning when he comes back?

A. Yes, sir.

Q. Does that oil last two shifts?

A. Operating two drills it will sometimes give out in a day.

Q. If it gives out you send down and get some oil?

A. Yes, sir.

Q. You can send whenever you please?

A. Yes, sir.

Q. You are the boss in that particular place?

A. Yes, sir.

Q. If you need drill steel or a quarry bar or jackhammer steel or wedges or hangers or anything else, you can send the men down to the tool house to get them?

A. Yes, sir.

Q. But you found it easier to pick up these light tools in the morning?

Mr. Harris:

I object to that.

The Court:

Overruled.

Q. You have found it easier to pick them up in the morning than to send the men back after them?

A. The can?

Q. Yes, sir, and the jackhammer steel and wedges and hangers?

A. In some cases.

Q. In some cases?

A. Sometimes the can don't be there.

Q. What is that?

A. Sometimes somebody have all the cans.

Q. If you need the wedges it is easier to pick them up in the morning?

A. We don't never send back for no wedges.

Q. You don't ever send back for wedges?

A. No, sir.

Q. Well, whatever you do send back for, your jack-hammer steel or quarry bars or anything else?

The Court:

Do you send back for them in some cases?

The Witness:

Yes, sir, sometimes.

Q. You can do it whenever you need them?

A. Yes, sir.

Q. You can send for your wedges?

A. We don't never need them.

Q. You don't need them because you pick them up before you get there?

A. We get them on our way going down.

Q. You want to have them up there? You want to have a full supply as you go all the time?

A. Sure.

Q. Don't you know at times you head miners and your crews—you are so anxious to have these things on hand all the time at the working place, the fellow that got there first picked them all up and there wouldn't be any there for those that got there late and they had to lock the box?

A. I don't understand you. You mean my box?

Q. The tool box where you get these things.

A. My box.

Q. No, the box where you get these things.

A. I don't know about that.

Q. You don't know about that?

A. No, sir, I don't know about that.

Q. You do know you try to have your men and the crew that work with you to have a full supply of these

various things, jackhammer steel and wedges and hangers and so on on hand all the time?

A. Yes, sir.

Q. And if you stopped up there and sent a man for them, it would cut into your production?

The Court:

I think that is arguing with the witness.

Mr. Burr:

I think so myself.

The Court:

We will take a recess for a few minutes.

(Thereupon proceedings were in recess from 2:35 P. M. to 2:45 P. M., at which time proceedings were resumed as follows:)

(By Mr. Burr):

Q. Wade, you are—

Mr. Harris:

Ward.

Q. Ward, you are familiar with the company rule book all the employees get?

A. Yes, sir.

Mr. Smith:

A little louder.

Mr. Burr:

I asked him if he was familiar with the company rule book all the employees get, and he said, "Yes, sir."

Mr. Smith:
Yes, sir.

Q. Are you familiar with Rule 10 on page 8, "If you are injured no matter how little, tell your foreman about it right away and go to the doctor."

A. Yes, sir.

Q. You are familiar with that rule?

A. Yes, sir.

Q. You are familiar with the rule to tell your foreman about any injury your men receive or you receive?

A. Yes, sir.

Q. And you have reported them?

A. Yes, sir.

Q. I want you to tell us during this 23 years if you have ever received an injury on that skip?

A. No, sir.

Q. Have you received any walking up to your working places?

A. No, sir.

Q. Have you ever had any of your men to receive any you had to report?

A. Yes, sir.

Q. How many, and when?

A. Two.

Q. Who was that and when?

A. That was in March, about the 31st day of March.

Q. How did the first one get injured?

A. The first one got hurt hanging a hose pipe on a timber, and a rock—

Q. He was at work, was he?

A. Yes, sir.

Q. I asked you about coming down on the skip?

A. No, sir, I don't remember.

Q. Or walking down the man way?

A. No, sir.

Mr. Burr:

That is all.

Re-Direct Examination.

(By Mr. Harris):

Q. You said you got there at five minutes to six or six o'clock, but that you went down on the second skip?

A. Yes, sir.

Q. Do you know that of your own choice, or do you do it under instructions?

A. I do it under instructions.

Q. Who instructed you to take the second skip?

A. The assistant mine foreman.

Q. Have you been taking the second skip all the time under his instructions?

A. That is right.

Q. Now, when you report for your shift and turn in your check, are you in your working clothes at that time?

A. Yes, sir.

Q. And your crew are in their work clothes when they turn in their checks?

A. Yes, sir.

Mr. Harris:

That is all.

Re-Cross Examination.

(By Mr. Burr):

Q. You get in your work clothes at the bath house?

A. Yes, sir.

Q. You say this assistant mine foreman—what was his name—that gave you instructions about taking the skip—

A. Yes, sir.

Q. Who was he?

A. At the time, Mr. Lynne Eddins.

Q. What is his name, Edmonds?

The Court:
Is it Eddins?

Q. E-d-d-i-n-s?
A. Eddins is the way I pronounce it.
Q. How long has he been dead?
A. I disremember now.
Q. Five or six years?
A. I don't know; not that long.

The Court:
That is not material.

Q. All right.
A. The next one was Tom Clayton.
Q. Mr. Tom Clayton?
A. Yes, sir.
Q. When was it Mr. Eddins gave you instructions about what skip to take?
A. Well, in his lifetime—
Q. When was it?
A. In 1939.
Q. What did he tell you?
A. Me and all my men catch the second trip, or he was going to send us to the superintendent.
Q. You and all your men get the second trip or he was going to send you to the superintendent?
A. Yes, sir.
Q. You and your men went down together?
A. Yes, sir.
Q. Did you walk up to your working place together?
A. Not all the time. We had to stop and get tools.
Q. Did all of them stop?
A. Not always.
Q. How many stopped?
A. Two or three.

Q. Did you stop?

A. Yes, sir.

Q. Did the rest all walk on to your working place together?

A. Yes, sir.

Q. When was it Mr. Clayton gave you instructions?

A. Before May 1st.

Q. How long before May 1st?

A. A couple of months.

Q. What did he say to you?

A. The same thing.

Q. Give us his words.

A. He told me me and my men were going to catch the second drag or else he was going to send us to the superintendent.

Q. Or else he was going to send you to the superintendent?

A. Yes, sir.

Q. Was that the only time he told you that?

A. Excusing Mr. Tom; he told me several times.

Q. Kept on telling you that?

A. Several times.

Q. What do you mean by several times?

A. More than once.

Q. Was it more than twice?

A. More than once.

Q. More than five times?

A. More than once.

Q. That is the best you can say about it?

A. Yes, sir.

Mr. Burr:

Well, you can come down.

(Witness excused.)

Mr. Harris:
Has Mr. McDaniel finished?

The Court:
Are you ready?

Mr. C. J. McDaniel:
Yes.

The Court:
Come around.

Mr. Burr:
Your Honor, he has these papers mixed up.

The Court:
Suppose we take up another witness.

Mr. Burr:
Sir?

The Court:
Are you about ready?

Mr. Burr:
Yes, sir, Your Honor, I handed them to him in order, and I am trying to get them back in order. I am not trying to kill any time.

2645 CHARLEY J. McDANIEL thereupon resumed the stand, and having been previously sworn, testified further as follows:

Cross Examination—Resumed.

(By Mr. Burr):
Q. Have you examined these, Mr. McDaniel?
A. Yes, sir.

Q. Since examining them, I show you first the one in 1934. Do you remember that one?

A. I remember something about that 1934. That isn't all we presented to the company.

Q. You presented something besides that?

A. That wasn't the first we presented.

Q. You did present another besides this?

A. We presented one asking for six hours, and I didn't find that one in there at all.

Q. Where is that one?

A. I couldn't tell you.

Q. What else did it have in it?

A. We asked for six hours and the check off system and recognition of the union; and I am pretty sure a ten-cent raise,—the first one we presented to the company.

Q. Now, what president did you present that one to?

A. The one that was in office in 1934. I don't know which one it was,—Mr. Gregg or Mr. Perry.

Q. Was that before this one or after this one—

A. Let me see.

Q. You signed this one?

A. The one we signed was not presented to the company at all.

Q. Oh; you never presented that one?

A. The one we signed the company gave back to us.

Q. That is your signature?

A. We agreed to this stuff in this contract, but that is not the one we presented to the company.

Q. How did they get it?

A. They made it out themselves.

Q. Isn't that—

The Court:

As I understand, the company drafted it and presented it to them and they signed it.

Q. Do you mean the company presented this to you and you signed it?

The Court:
That is what he said.

Mr. Burr:
He may have said it. If he did I want to ask some questions.

Q. Do I understand this one,—the company wrote this?
A. Yes, sir. I say that is what the company gave back to us.
Q. Let's read it and see.

The Court:
Is it necessary to read it?

Mr. Burr:
Yes, sir. I want to cross examine this witness, Judge.

The Court:
Go ahead.

Mr. Burr:
Yes, sir.

The Court:
Go ahead.

Q. That the company recognize our union and agree to conduct negotiations with our chosen representatives; did the company give you that?
A. They gave us that one there.
Q. Did the company give you one that read this way: "That the company give us the check-off and collection of dues by the company?"

A. I didn't find that on there.

Q. Well, there it is right there. I am not going to read anything that is not on there.

A. I was wrong on the—I didn't see that on there a while ago, but this is—I understand now. This is what we sent the company.

Q. That is what I asked you.

A. That is correct.

Q. That is what you sent to the company April 5, 1934?

A. That is correct.

Q. Who all wrote it? Who wrote it?

A. That is not the contract we got.

Q. You didn't get any contract until 1938, did you?

A. Yes, sir.

Q. These are all proposals prior to 1938?

A. Yes, sir.

Q. That is the one you made at that time?

The Court:

He said that.

Q. Did you make any other along about that time besides this one?

A. If it is not in there about six hours, we made that one. If it is in there about six hours,—that is the first one we made.

Q. Did you make one or two in 1934?

A. My recollection, the first one we made asked for six hours, and then we made a counter proposal and the company turned it down. We discussed that and the company turned it down.

A. I don't know. But I know we discussed that—the six hour day—

Q. How many proposals did you take up to the company in 1934?

A. I don't know how it got there, whether Mr. Horn sent it through the mail—

Q. How many did you sign yourself in 1934?

A. I am not positive. I know I signed one, but I am not positive—the company turned us down, everything we asked for. Whether we went back with another proposal at that time or not, I don't know, but it seems like we did.

Q. Do you remember whether you signed one or two? What is your best recollection?

A. It seems to me two, but I am not positive.

Q. What about 1935? The next one I show you, is this the one you presented in 1935? First, let me ask you how many did you present in 1935?

A. We didn't present but one in 1935, I know.

Q. Is this the one? That is Exhibit Number 9.

A. Yes, sir, that is the one we presented, I am pretty sure, in 1935.

Q. All right, sir. That is the only one you presented in 1935. Now, then, how many did you present in 1936? Did you present any in 1936 or not?

A. We presented—

Q. If you don't remember—Go right ahead.

A. I was trying to think. I know we presented one. When the incentive plan started out it seems we gave Mr. Ball anotner one. I wouldn't be positive. It seems we did present one.

Q. Look at Number 12, which are the minutes of the meeting you held at which the one you presented was discussed, signed by Mrs. Barksdale. He was president of the Local at that time?

A. Yes, sir.

Q. That is his signature there; you know him?

A. I know Barksdale.

Q. Do you know his signature?

A. I don't know his signature.

Q. You recall that meeting?

A. Yes, sir.

Q. You recall that?
A. Yes, sir.

Mr. Burr:
That is Exhibit Number 12.

Q. Now, then, in—I will ask you to look at this one here signed by Mr. Horn as president, May, 1936. Is that the one presented in 1936, the one that is attached there?
A. Yes, sir; I remember that one.
Q. You remember that one?
A. Yes, sir.
Q. That is the one you presented in 1936?
A. Yes, sir.

Mr. Burr:
That is Tennessee Company's Exhibit Number 10.

Q. Then in 1938 a contract was made?
A. That is right.
Q. That is the one you made in Chicago,—discussed in Chicago?
A. It was discussed in Chicago.
Q. Is this what happened, to go over it hurriedly? You had meetings in Chicago and discussed the settlement of the case before the National Labo. Relations Board?
A. Yes, sir.
Q. And discussed the question of a written agreement?
A. Yes, sir.
Q. You wrote out both in Chicago?
A. No, sir.
Q. Which one was written out in Chicago?
A. The stipulation.
Q. Where was the working agreement written out?
A. In Birmingham, I suppose.
Q. Where?

A. Here.

Q. Are you certain about that?

A. I am pretty sure the company wrote it out there because we agreed in Chicago—when we asked for a contract, in agreeing to settle and compromise these cases, they offered to give us practically the same thing as the steel workers, and we asked for the same as the United Mine Workers, and they said they couldn't do it. We asked for the check-off system and a seven hour day, and they said they couldn't do that and would give us the one the steel workers had. When we came back there was nothing to do but sign the one with the steel workers.

Q. Did you bring one back here with you?

A. No, sir.

Q. It is signed by Mr. Robinson.

A. That is true. There was no negotiation to that. When we got back to Birmingham we went in and signed it.

Q. Just signed it without any discussion whatever?

A. The same one the steel workers had.

Q. To refresh your recollection, Mr. McDaniel, don't you know that you and Mr. Pressman, the General Counsel, and others that represented the Union, sat down in Chicago with Mr. Vance and Mr. Moss and Mr. Ben Rawlins,—sat down and agreed on the stipulation and agreed on the contract, and the stipulation had to be carried to Washington and submitted to the National Labor Relations Board for their approval, and the contract to be brought back and submitted to your locals for their approval; isn't that what happened, to refresh your recollection?

A. It was approved to bring back and present to the locals, and we discussed the contract in Chicago and went into it thoroughly, but if any contract was drawn up there at all, I don't remember it. I do remember the stipulation.

We came back to Washington and presented it to the Board and they approved it, and we asked for a contract the same as the United Mine Workers had and they rejected that and said they would give us the same as the steel workers, and we came back and signed it.

The Court:

You have been over that two or three times.

Mr. Burr:

I want to ask this question, and I want you to answer it yes or no:

Q. Refreshing your recollection, Mr. McDaniel, in the Chicago conference at the Palmer House—you stayed there about four days, and you discussed the stipulation and you discussed the contract, and it was understood and agreed that you were to get the contract and the company was to make the stipulation, and you prepared the stipulation and you prepared the contract and you left there and went to Washington and submitted the stipulation for the approval of the National Labor Relations Board and got their approval, and then it was signed, and then the Union people brought the contract back to Birmingham and submitted it to their locals and they approved it and it was signed.

I want to know whether you did that or not, whether that happened or not?

A. Partly did and partly didn't.

Q. Wasn't there two contracts—

A. Wasn't any contract brought back. It was what the steel workers had.

Q. Well, what is your recollection?

A. It was not.

Q. All right.

A. It was understood we would accept the steel workers contract. It was turned over to these people that

went to Chicago to settle it. We didn't have to submit it back to the locals.

Q. You didn't have to submit it back to the locals?

A. No, sir. It was in our hands to settle.

Mr. Burr:

That is all.

Re-Direct Examination.

(By Mr. Harris):

Q. Mr. McDaniel, this thing marked T. C. I. Exhibit Number 6, on the second page, says:

"9. In view of the fact that the National Industrial Recovery Act was passed for the purpose of employing more men and increasing the purchasing power, we ask for a seven hour day."

Before asking for a seven hour day, state whether or not you had asked for a six hour day?

A. We asked for a six hour day.

Q. All right. In your request for a six hour day, did you ask for pay for the time for going from the mouth to the face and the face back to the mouth?

Mr. Burr:

Was that in writing or not?

Mr. Harris:

I am coming to that.

A. We asked for a six hour day, and the company wouldn't give us that, and then we offered to compromise and give us a seven hour day and travel one way.

Q. All right. When you proposed they give you a six hour day, have you any recollection whether that was in writing or verbal?

A. I am not positive, but I thought it was in writing.

Q. Then, after they rejected that, you made a proposition for a seven hour day and pay for one way?

A. That is right.

Q. I call your attention to the following:

"In view of the fact that the company can force the men to enter and leave the mines at any time stated by the company, we ask the right to enter on our time and leave on the company's time."

Now, that exhibit is dated Bessemer, Alabama, April 13, 1934.

The Court:

What is the number of that exhibit?

Mr. Harris:

That is T. C. I. Exhibit Number 6.

Mr. Burr:

The same one I asked him about.

Mr. Harris:

Yes, sir. I picked it up off the table.

Mr. Burr:

Yes, sir.

Q. How long was it between the time you asked them for a six hour day and made them a compromise proposal of a seven hour day and pay one way?

A. It was—We made the proposal in—

The Court:

What is the difference in time, he asked?

Q. Just how long?

A. I am trying to get it. The first one we made, we made it about a couple of months, thirty or sixty days before the strike. They turned that down and then we came back with the second proposal. I will say thirty—probably less than thirty days, because we came back and gave another one.

Mr. Harris:

That is all.

Re-Cross Examination.

(By Mr. Burr):

Q. Since Mr. Harris examined you, I want to know whether your six hour day proposal was in writing or verbal?

A. I am almost positive it was in writing.

Q. Did you ever ask for five days?

A. We asked for a six hour day.

Q. Who did you discuss it with?

A. I am pretty sure Mr. Gregg,—whichever one was in the office at that time.

Q. Who else was there beside the president?

A. Mr. Ball, I am pretty sure, was present, and the gentleman doing the writing. I don't know his name.

Q. Mr. Bowen?

A. I never heard his name. I suppose he was the president's secretary. Anyhow, he was doing the writing.

Q. And who else?

A. The vice president.

Q. Mr. Abbott?

A. Mr. Abbott.

Q. Anybody else?

A. That is all I remember that was on the company's side.

Q. Who was there with you when the six hour proposition was presented?

A. I don't remember them all, but I remember some of them.

Q. All you remember, please, sir?

A. Myself, Mr. Finch,—at that time he was with the American Federation of Labor,—Mr. Van Jones, Mr. Dick Anderson—

The Court:

Let him go ahead. You asked him for that.

Mr. Burr:

I want to state I—

The Court:

Don't interrupt him.

A. Mr. Dick Anderson. The secretary from Muscoda is dead, I have forgotten his name. He was present. A colored fellow from Muscoda was vice president of the local; I have forgotten his name now. And Will Mahan, and Morris Smith, and either Mr. Pegues or Mr. Coles. I have forgotten which one. That was the general committee.

Q. Mr. Finch wasn't on your general committee at that time, was he?

A. He was from the A. F. of L.

Q. Was he representing the A. F. of L.?

A. He was working for the A. F. L.

Q. To refresh your recollection, when Finch and Coles were there, they were both representing the government?

A. Not in 1934.

Q. Were Finch and Coles there in 1934?

A. If Coles was present at this meeting,—I am not certain he was there,—but if he was there, he was vice president of the union.

Q. What was Finch doing there?

A. He was representing the American Federation of Labor.

Q. Were you jointly presenting a demand?

A. We were all in the American Federation of Labor at that time.

Mr. Burr:

That is all.

The Court:

Come down.

(Witness excused.)

Mr. Harris:

Call Percy Kirby.

2656 PERCY KIRBY, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. How old are you, Mr. Kirby?

A. Thirty-seven.

Q. Talk a little louder, please, sir.

A. Thirty-seven.

The Court:

What are his initials?

Q. P-e-r-c-y K-i-r-b-y?
A. Yes, sir.
Q. Where were you born, Mr. Kirby?
A. Jefferson County.
Q. How high did you go in school?
A. Through the seventh.
Q. What business do you follow?
A. Mining.
Q. What company?
A. T. C. I.
Q. What mine?
A. Number 10, Wenonah.
Q. How long have you been working at Number 10 at Wenonah?
A. Since November 2, 1938.
Q. During that period, November 2, 1938, up to May 1, 1941, was the Wenonah Mine working on a five day a week basis?
A. Yes, sir, but they didn't work five days all the time.
Q. Yes, sir. Were there two summers—three summers in which they didn't work the five days?
A. I believe there were two.
Q. Now, what is your work?
A. Head miners.
Q. What was your work at Number 10 on November 2, 1938?
A. Head miner.
Q. Do you work alternately on day shift and night shift?
A. Yes, sir.
Q. On November 2, 1938, what time did you report for work in the morning, day shift?
A. Around six o'clock.
Q. And if you were on the night shift did you report at six o'clock in the afternoon?

A. Yes, sir.

Q. When you reported for work in the morning or in the evening, dependent on whichever shift you were on, did you hand in your check at the tally house?

A. Yes, sir.

Q. At the time you handed in your check were you in your work clothes?

A. Yes, sir.

Q. How did you go down in the mine at Wenonah Number 10?

A. In the skip.

Q. Who ran the skip, the company or you?

A. The company.

Mr. Burr:

Now, is there any dispute about that at all?

Mr. Harris:

I don't know.

The Court:

Go ahead.

Mr. Harris:

I want to make a stipulation as to this.

Q. What time, after you got there, did the skip start down?

A. Well, at that time they usually ran a safety run, and had the skip ready to go at six o'clock.

Q. Between the time you turned in your check and the time you caught the skip, did you ever receive orders from the mine foreman or assistant mine foreman?

A. Yes, sir.

Q. Did you, at Number 10, turn in the checks of your men, or did the men turn in their own checks?

A. They turned in their own checks.

Q. How many men rode down the skip at Number 10?

A. Well, at that time there were around 35.

Q. How far was it from the man unloading station where you got off the skip to the place where you were drilling?

A. I should say between two and three thousand feet.

Q. Did you or your men, in going down into the mine on the skip, carry any tools, wedges or hangers or any other material besides your carbide lights?

A. Well, I have on a few occasions carried jackhammer steel down.

Q. After you got off at the man unloading station at Number 10, did you or any members of your crew pick up anything on the way to the drilling place?

A. Yes, sir; we had oil to pick up, and when we could get them, we had hangers and wedges and jackhammer steel to pick up, and in case it was needed, we would get an air hose or water hose or water fittings, and such as that.

Q. Then, at the time you blasted and started out of the mine, did you and your men carry anything along with you out of the mine?

A. Well, we would have our oil cans, and in case we carried anything down like jackhammer steel or bars, we would have to carry something back in place of it. In other words, we would have to carry a dull steel or dull bar.

Q. In walking from the manloading station to the place where you were drilling, were you able to walk erect?

A. Well, there was one place below the hoodlum at Number 10 on the left manway where you have to stoop to keep from bumping your head.

Q. The rest of the way you can walk erect at Number 10?

A. Yes, sir.

Q. Now, in going down that main slope or riding up that main slope, can you stand erect in the skip at Number 10?

A. No, sir, you cannot.

Q. What position is normally and habitually used by the men in riding the skip in and out of the mine at Number 10?

A. They have to lay over against each other to keep their heads below the top of the skip. There is a sign up there that says, keep your head below the top.

Q. At Number 10 during those three years, what was the blasting time on the day shift?

A. From 10 to 15 minutes after 3:00.

Q. Were you working there when they were on the ten hour shift?

A. I wasn't working at Number 10.

Q. Were you working for the T. C. I.?

A. Yes, sir.

Q. At what mine were you working?

A. Well, I worked at Number 9 most of the time, but I had worked at 8 and 7.

Q. At Number 7—were you there when they were on the ten hour shift?

A. Just an extra shift is all. I didn't work there regularly.

Q. If you didn't work there regularly, I don't want to ask you about it.

A. I worked at Number 8 regularly.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr. Burr):

Q. How long have you been working for the company, Mr. Kirby?

A. A little better than 17 years.

Q. Did you ever work for any other company, or has all your work been with the Tennessee Company?

A. All my mining has been with the Tennessee Company.

Q. That is what I mean. All your mining work.

A. Yes, sir.

Q. How have been a head miner how long,—since the incentive plan went in?

A. I have been head miner since then. I worked in the same job before.

Q. As section foreman?

A. Yes, sir.

Q. About how long have you been section foreman?

A. Except times when there was a reduction in forces, if I am not mistaken, since 1927.

Q. Since 1927?

A. Latter part of 1927 or 1928.

Q. So, as a usual thing, you have been head miner or section foreman since that time?

A. Yes, sir.

Q. You have been riding the same skip all that time?

A. Yes, sir.

Q. Been handled the same way?

A. Practically.

Q. And you have been walking over the same walkways going to your working places?

A. Yes, sir, unless there were different places.

Q. That is what I say. You have been walking to your working places?

A. Yes, sir.

Q. And coming back and catching the skip and going out?

A. Yes, sir.

Q. The same height roof, the same or practically the same, or different?

A. Been practically the same.

Q. Been practically the same all the time?

A. As far as the roof—

Q. It has been electrically lighted?

A. Back when I first went to work it wasn't electrically lighted.

Q. Do you recall when it was electrically lighted, the slopes and haulage ways, about when it was?

A. No, sir, I don't believe I can.

Q. It has been a good many years ago?

A. Yes, sir.

Q. As head miner and section foreman, you were the boss of your crew in the room or stope where you worked?

A. Yes, sir.

Q. When you first got to the mine you deposited your check?

A. Yes, sir.

Q. Got your carbide first?

A. Yes, sir.

Q. Deposited your check?

A. Yes, sir.

Q. Did you go down on the first skip regularly, or catch any skip you pleased?

A. I have caught the first skip more over the period of time.

Q. Did you catch the first skip regularly, or any skip you pleased?

A. It worked backwards and forwards.

Q. Sometimes the first and sometimes the second and sometimes the third?

A. Occasionally.

Q. Occasionally the third?

A. Yes, sir.

Q. You say sometimes the mine foreman or assistant mine foreman would give you some orders at the top. What kind of orders would that be?

A. Well, probably—

Q. Not probably; what would it be?

A. Pertaining to the roof or conditions at the place. Maybe the opposite shift—

Q. Don't make any maybes. Give me the particular instances, what they said?

A. I can't five the dates.

Q. I don't want the dates. I want to know what would be said.

A. They would say, "There is bad top in your place."

Q. Is that all they would say?

A. "Watch it", or "We will send a timber man."

Q. That is about what they would say, there is bad roof in your place and watch it and there would be a timber man in there?

A. Yes, sir.

Q. What other instructions?

A. They would tell me my rope had come and it was on the nuck, and I would get it.

Q. What would they say?

A. Just say, "Kirby, your rope has come, and it is on the nuck down there, and you can get it now."

Q. What other instructions did they give you?

A. I don't recall—

Q. Is that all they would give you?

A. Maybe little things about a drill—

Q. Tell me what they were. It is so easy to say, "They gave me instructions." Tell me what the instructions were—

Mr. Harris:

We object to him arguing with the witness.

Mr. Burr:

It is so easy to say, "They gave me instructions." I want to know what they were.

Q. Anything else?

A. If the drill was broke down, sometimes the other shift would leave a note it was on the running board.

Q. They would say the drill was broke down and it was on the running board?

A. Yes, sir.

Q. Anything else?

A. I don't remember now.

Q. Was that every morning or just occasionally?

A. Occasionally, I suppose.

Q. When they found out something had happened to your roof or rope, they would tell you the next morning when you went down?

A. Yes, sir.

Q. You knew you had to quarry your roof down every morning?

A. Yes, sir.

Q. That was your first job?

A. Yes, sir.

Q. Aside from what you have told us the assistant mine foreman told you, or the mine foreman told you, all you did in the way of work was to get your carbide and lay your check down?

A. That is at the outside.

Q. That is what I mean, at the outside.

A. At the outside.

Q. Then you rode down and got off and walked to your working place?

A. Here the last few years we have to get our time sheets.

Q. The head miners get that?

A. Yes, sir.

Q. That is a sheet of paper?

A. No, sir, it isn't.

Q. A little book, what they call a brief case?

A. Yes, sir.

Q. How much would it weigh?

A. It is made of wood, about that big (indicating).

Q. Not as heavy as mine?

A. No, sir.

Q. How many sheets did it have in it?

A. A pad in the bottom and a sheet on top to keep it from getting red.

Q. You carried that along and walked along?

A. Yes, sir.

Q. Did you get anything else?

A. No, sir. I would tell the men to get that.

Q. The extent of you getting anything was your time sheet in that little brief case?

A. Yes, sir.

Q. You would tell your men to get what they needed in the way of wedges and hangers and jackhammer steel?

A. I have toted hangers down.

Q. You would tell your men what to get?

A. Yes, sir.

Q. When you got to your working place you were the boss up there except as the mine foreman or assistant mine foreman came around?

A. As far as the heading crew, yes, sir.

Q. If you ran out of anything up there, you sent some of your men back to get it?

A. I could.

Q. You did, didn't you?

A. Very seldom.

Q. The reason you didn't do it, you had your men pick it up on the way in?

A. Yes, sir.

Q. And kept from running out?

A. Yes, sir.

Q. You had the right to send them back?

A. Yes, sir.

Q. But picking up this light stuff on the way up it saved time walking back and going back and saved the time of doing that for producing ore?

A. Yes, it will save—
Q. Yes.
A. Yes.

Mr. Burr:
That is all I want to ask him.

Mr. Harris:
That is all, Mr. Kirby.

(Witness excused.)

Mr. Harris:
Call Mr. Littleton,—Mr. George Littleton.

2667 GEORGE LITTLETON, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):
Q. You spell your name L-i-t-t-l-e-t-o-n?
A. Yes, sir.
Q. And your first name is George?
A. Yes, sir.
Q. How old are you, Mr. Littleton?
A. Forty-one.
Q. Sir?
A. Forty-one.
Q. Where were you born?
A. I was born at Clanton, Alabama.
Q. How high did you go in school?
A. Third grade.
Q. How long have you been an ore miner?
A. Well, my first experience in ore mining was about 1912 or '13.

Q. Where was that?
A. T. C. I., Muscoda,—known as Reeders at that time.
Q. You say you are forty-one?
A. Yes, sir.
Q. And your first experience was in '12 or '13?
A. Around '13.
Q. Well, what did you do as a 13 year old boy in the mine?
A. Drove a mule.
Q. And what is your job now?
A. I am a head miner.
Q. How long have you been a head miner for the T. C. I.?
A. Well, I was a head miner from about 1923 or '24 to about '28 or probably the first of '29, and then I left over at Muscoda, and then I came back there in 1937, in February.
Q. And have been a head miner ever since?
A. Yes, sir.
Q. And at Muscoda 6?
A. Yes, sir.
Q. At Muscoda Number 6, from October 24, 1938, to May 1, 1941, what time did you report for work on the day shift?
A. At six o'clock.
Q. Where did you report?
A. At the tally house.
Q. How did you report?
A. Well, I reported ready to go to work.
Q. Did you have a brass check at Muscoda?
A. Yes, sir.
Q. Did you turn it in?
A. Yes, sir.
Q. At the end of your shift did you pick up your brass check?
A. Yes, sir.

Q. What time in the day, during those three years, on the day shift, did you turn in your brass check?

A. In 1937, Mr. Harris?

Q. No, in 1938. I am only interested in '38.

A. In '38?

Q. Yes.

A. I would put a check in about six o'clock in the morning, and when we checked out, we checked out from about 3:30 until ten minutes of four in the afternoon.

Q. All right. When you put your check in at the tally house, were you in your work clothes?

A. Yes, sir.

Q. At Muscoda Number 6, did any mine foreman or assistant mine foreman ordinarily appear there at the mouth of the mine or at the tally house before the first man trip went down?

A. Yes, sir.

Q. And did you receive any orders or instructions from him before you caught the man trip?

A. Well, there were times I would talk to the mine foreman about the condition of my place. Maybe I would need timbers, or probably I would need some kind of equipment, rope or track or anything pertaining to the operation of my place I knew I needed, I would discuss with my mine foreman, yes, sir.

Q. How about the members of your crew? Suppose you were a man short.

A. If I was a man short and knew there was a good man out there, I would ask the mine foreman for permission to work him at times. He usually gave us permission to work anybody we wanted to.

Q. Well, what time did the man trip run down at Muscoda Number 6?

A. Well, usually a minute and a half or two minutes after six, after the whistle blows,—as soon as the men could load up.

Q. At mine Number 6, after you got off at the man unloading station, did they have any tool house or supply house near the station?

A. No, sir.

Q. Was there any tool house or oil station where you picked up anything on the way in?

A. There was a place there where we got oil for the drill or the motor, but they changed that system there, that oil proposition. The management decided to put a drum of oil around the face of each heading or near such place.

Mr. Burr:

Mr. Littleton, will you repeat that, please? I didn't get it.

The Witness:

They changed the system of handling the oil at Muscoda. The oil system we carried it up in cans. The management decided we wasted so much oil—I believe the mine foremen requested it, or Mr. Carter,—anyway, they put a barrel of oil in each place where they wouldn't waste it. Sometimes I had a drum of oil in my heading which I have had since the first of the year. The boys in the next heading would run out and come down and get it.

Q. Was that change made about the first of this year?

A. It has been six or seven months.

Q. How about the wedges and hangers and jackhammer steel?

A. We have had different systems on that.

Q. Well, since October 24, 1938?

A. At times the men had to go to the supply house and get them, and then we had hangers up at the carbide house, and there have been times when they sent the hangers down to the timber tunnel. They had a man

down there, Mr. Burgess,—he was the powder man,—and he would divide those hangers out in equal numbers.

Q. Divide them out among whom?

A. Each of the head miners; give them a certain number of hangers, say four or five, and 25 or 40 wedges.

Q. How about the jackhammer steel? Did he issue that too?

A. We had different systems on our jackhammer steel. Ordinarily we carried our jackhammer steel out and carried them to the bath-house, and then carried them to the supply house and a exchanged them out.

Q. Was the supply house inside or outside at Number 6?

A. Outside.

Q. Did you work steadily for the Tennessee Company, or did you ever work for any other company?

A. Back when I was telling you about I believe I did drive a mule at Raimund for a short period of time. I know I did work there at Raimund for a short period of time.

Q. In the skip at Number 6 Muscoda, how many men ordinarily ride on the man trip down?

A. Well, I couldn't say positively going down. I would say around 38 men or 40.

Q. Who gives the signal, or direction, if any, for the skip at that time to go down?

A. Well, the assistant mine foremen.

Q. And do the men riding in the skip have any control of it as it goes down?

A. Well, the man in the chair, he can stop the skip by a signalling device. They have one on the back and one on the front of the skip. Otherwise there would be no control of the skip by any man on the skip.

What I mean by stopping, Mr. Harris, he can give a signal to the engineer if he seen anything—

Q. I see.

A. —that it was necessary to stop the skip for.

Q. Now, on the skip at Muscoda Number 6, did you have anything on there to carry tools down with?

A. Well, we did have a bucket or a tough, I will say, built about—oh, approximately two feet long maybe a little longer,—I wouldn't be sure about it, and maybe about eight or ten inches wide, and about eight inches high. It hung on the bail,—had a couple of arms that fit over the safety ropes. We used that for a while to carry down hangers and wedges and drill steel. Then we—we didn't use that thing very long. I couldn't say just exactly how long.

Q. You put the tools in the basket you spoke about?

A. Well, whoever would bring them up, he would just drop them in there whenever that system was in use.

Q. Well, would that be miners or drill helprs or members of the production or service crews?

A. What I know about would be when they brought jackhammer steel. That would be section helpers,—hangers and wedges.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr. Burr):

Q. Mr. Littleton, you have been head miner or section foreman about how many years?

A. I was stoper foreman—I believe it was known as stoper foreman, from about '23 to '27 or '28. I have been a head miner since it went in regularly.

Q. Well, you have been the head miner in the working place, either stoper foreman or section foreman or head miner during all this time?

A. Yes, sir

Q. The head miner went in when the incentive plan went in?

A. Yes, sir.

Q. During that period of time you had ridden in the same skip?

A. Yes, sir.

Q. It has been handled in the same way?

A. Yes, sir.

Q. You have been walking after you got off the skip at the man loading station to your place of work?

A. Yes, sir.

Q. Do you recall when the electric lighting system was put in there?

A. It was put in there when the mechanical loaders were put in there. I couldn't say the time.

Q. About 1923, wasn't it?

A. I couldn't say.

Q. Been there a good many years?

A. Yes, sir, been there some time.

Q. The first thing you did, you went to the bath house and changed your clothes?

A. Yes, sir.

Q. Then you went over to the tally house—

A. Well,—

Q. —Got your carbide first? I am talking about the general things. I will get back to this tool handling matter later. Did you do anything else from the time you got your carbide—Did you do anything else from the time you bathed and got your carbide?

A. You have got me mixed up, Mr. Burr. You say from the time I bathed,—

Q. Let me start over. You changed your clothes?

A. Yes, sir.

Q. And then you got your carbide?

A. Yes, sir.

Q. Did you go down to the carbide house?

A. Sometimes I had some jackhammer steel to pick up.

Q. Sometimes you got your jackhammer steel at the carbide house?

A. Yes, sir.

Q. That was just one system they had?

A. Yes, sir.

Q. Just forget all the systems. I will come back to that later.

A. Yes, sir.

Q. You would get your carbide and then go deposit your check?

A. I would get my carbide and walk up to the mine, yes, sir.

Q. Is that the time, if you saw you had a vacancy in the crew and saw a good man, you asked the mine foreman for that man?

A. If I knew a man would be off and I saw a good man, I would ask the mine foreman for that man.

Q. You wanted a good man to help you out on your production?

A. Yes, sir.

Q. If you wanted to know about the conditions in your place you talked to your mine foreman about it?

A. Yes, sir.

Q. That was for your own convenience?

Mr. Harris:

We object to it. That is a conclusion.

Mr. Burr:

I am asking him for a fact.

The Court:

Mr. Burr, you made the statement after he answered.

Mr. Burr:

Will you read that back?

(Thereupon the reporter read as follows:

"Question. If you wanted to know about the conditions in your place, you talked to your mine foreman about it?

"Answer: Yes, sir.

"Question: That was for your own convenience?")

A. Well, I wouldn't necessarily say it was for my own convenience. It would be—what I would talk to the mine foreman about would be about the management of the place,—different things, whatever he wanted to tell me or whatever I wanted to know, and lots of times he would probably give me different instructions.

Q. What sort of instructions did he give you?

A. Lots of times probably we were moving up, the stope was moving up, and the mine foreman would tell you, "You go down and start moving up today," or "Go down and tear that chute up today,"—different things that came up, different situations. The opposite shift out there might leave a note out there about something we wouldn't know about, and he would tell us what to do about it.

Q. Those were the character of instructions he gave you?

A. Yes, sir.

The Court:

When was that done?

The Witness:

Sir?

The Court:

When were those instructions given you?

The Witness:

Well, I would probably talk to him on top in the morning while I was waiting for the man trip to start down.

Q. Did you bring the matter up with him, or he with you?

A. Sometimes it would be vice versa. Sometimes I would go to him and sometimes he would come to me.

Q. Was that every morning?

A. It wasn't every morning, no, sir, because those cases don't arise every day.

The Court:

I want to ask you this question:

Was that before or after you checked in?

The Witness:

Sometimes we would be talking before I checked in and sometimes afterwards.

Q. And what you were talking about would be about the condition of your place?

A. Yes, sir, about the operation of the place.

Q. Of your place?

A. Yes, sir.

Q. They keep using the word "check-in". Is the checking in you talk about just handing your check in; is that what you mean by checking in?

A. Just handing my brass in.

Q. Handing your brass in and hanging it up on the board?

A. Yes, sir.

Q. Each man hands in his own brass?

A. Hands it in to the window and the head miner or mine foreman or assistant mine foreman hangs it up.

Q. You said there were several systems since you had been there with respect to hanger steel and wedges and tools like that.

The first system, back in the old days, they had a man down at the timber loading place,—is that where they had the man?

A. The old system—we are working on a different system now. We are working up on the hill. We had a tool house—

Q. I am talking about the old system.

A. Well, on the old system we had a tool house. It was about 94, I believe.

Q. Was that tool house underground?

A. Yes, sir, underground.

Q. Near the manloading station?

A. I believe the manloading station was a heading—about one or two headings from there.

Q. Was the next system after that when they just brought the material of that kind down and the service crew deposited it on the lumber yard and they had some man there to hand it out to keep it from being wasted?

A. The next system I can tell you about was in 1937 when I came back. Then we went to the blacksmith shop and swapped our steel out. Then they commenced bringing it up to the carbide house.

Q. When was the time they swapped it out—

A. It was about 1938 the timber man issued it at the timber tunnel.

Q. Was there a time when they brought it down and just put it on the running board or timber hard and the men came by and got it and carried it up to the working places?

A. The time I am talking about they just issued it.

Q. Didn't that result in the head miners requesting Mr. Carter to put in another system because the ones that got there first got most of the material?

A. I don't know about that. I don't recollect about Mr. Carter, but they talked to the mine foreman about the system.

Q. There was a good deal of waste, and the ones that came in late wouldn't find it?

A. I couldn't say about that; I usually rode the first or second trip.

Q. Then you got a good supply?

A. Yes, sir, I got four or five or six hangers.

Q. Did you have a good supply at your place?

A. Yes, sir; I usually kept them.

Q. After that they started having those hangers and wedges at the carbide house?

A. I don't know whether it was after or before, but they had them there at one time.

Q. The way they handled it up there, they would make a requisition up there—

A. The mine foreman would give us a requisition.

Q. You would get a requisition, and the men would get it—

A. No, sir. I didn't turn it over to my crew. I would meet my men at the carbide house and get the requisition filled and then myself and possibly two or three of my men would carry the stuff out.

Q. And put it in that basket you have described?

A. Well, when that basket was in use, we did, and the rest of the time we put it in the skip or put it on the bail.

Q. Put it on the bail?

A. Yes, sir.

Q. How long did that custom continue?

A. I couldn't say. It continued a good long time.

Q. How many members of your crew did it take to help you take that stuff down?

A. It depended on what you got.

Q. About how many?

A. Two or three.

Q. You didn't get it every morning?

A. No, sir.

Q. About how many times a month would you have to get a requisition?

A. Well, we would usually get it about twice a month.

Q. About twice a month?

A. Yes, sir.

Q. A section helper is the name that is used for the men that work for you?
A. Yes, sir.
Q. They are not service crews?
A. The men that work in the stope.

Mr. Burr:
That is all.

The Court:
You are excused.

(Witness excused.)

Mr. Harris:
Call Hugh Stewart.

2681 HUGH STEWART, being called as a witness, and being first duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):
Q. How old are you, Mr. Stewart?
A. Thirty-two.
Q. Where were you born?
A. In Texas.
Q. How high did you go in school?
A. Ninth grade.
Q. What business do you follow?
A. Mining.
Q. What mine?
A. Muscoda Number 4, T. C. I.
Q. How long have you been at Muscoda Number 4?
A. Well, I have been there since October 1, 1938, the last time.

Q. When you reported for work while working on the day shift at Muscoda Number 4, what time did you report?

A. Around six o'clock.

Q. Did you have a brass check?

A. Yes, sir.

Q. Did you turn it in anywhere?

A. To the timekeeper or mine foreman.

Q. Where did you turn it in?

A. At the tally house.

Q. At the time you turned it in would you be wearing your work clothes?

A. Yes, sir.

Q. Did you have any regular skip from October 24, 1938, to May 1, 1941, that you took to ride down at Number 4?

A. Well, the general rule the first or second drag.

Q. Did you or your men carry tools down on the man trip with you?

A. Yes, sir, we carried—when we needed material we would carry it in a metal container fastened on the bail of the skip, and before we got there it was thrown inside the skip.

Q. Did Number 4 have a supply house all to itself, or did Number 4 and Number 6 have a common supply house?

A. Well, I don't know about Number 6. I imagine they got all their supplies where we got ours, at the supply house below the shop.

Q. Did you go or send men to the supply house to get things to carry down with you as you entered the mine?

A. Yes, sir, I have, and I have gone there myself and gotten supplies.

Q. Well, after checking in at the beginning of your shift, and before you caught the man trip, did you, dur-

ing those three years, receive orders from the mine foreman or assistant mine foreman as to your work or operations?

A. Yes, sir. I have at times,—not every day, but there would be timber cut or the other shift had left a note about bad top or needing timbers or something, or we were discussing moving up the place.

Q. At Number 4, did they have an oil station or tool box down near the man loading station?

A. Yes, sir, for quite a while, and up until, I will say, the last year, there was an oil station about 150 feet across the slope from the manloading platform at the bottom.

Q. On the way in to your drilling place did either you or your men pick up anything at that unloading station?

A. Yes, sir, the motor runner or drill runner would get a supply of oil about every other day.

Q. How about the tools, the jackhammer steel and hangers and wedges?

A. There have been times when, at Number 4, the mine foreman—

Mr. Burr:

I can't hear you.

A. I say there have been times at Number 4 mine when the mine foreman would order up wedges or hangers, but very seldom there was a man there to give them out. Sometimes we would get bars—very seldom we would have to bring bars in at the end of the working shift and hide them and pick them up when we came in on the next shift and go to the powder house and swap out.

Q. What time did you blast when you were on the day shift? What time did you light your fuses?

A. You mean the past three years?

Q. Yes.

A. Around 3:15; that was the instructions.

Q. And what time did you get to the mouth and pick up your check?

A. Coming out?

Q. Coming out.

A. Well, I will say the best of my judgment 3:30 to 4:15.

Q. No regular time?

A. Well, we would run around four o'clock. I always rode the last drag out.

Q. How far was your working place from the man loading station?

A. Well, I couldn't give you the exact footage, but—

Q. Well,—

A. —around twenty minutes peart walk,—maybe three-quarters of a mile, more or less.

Q. Well, were you walking down hill going in or were you walking up hill going in?

A. Well, there was, I imagine, a two percent variation in the grade until we get to the material way and catch another mine car going up the material way. Then it is practically level. It will vary some two or three percent.

Q. Could you walk standing erect going from the man-loading station to the working face?

A. Yes, sir.

Q. How was the footing? How was it underfoot in this particular mine?

A. Well, the ground was about level. You were walking in the middle of the track; about like walking on a railroad track out here where it is covered with slag,—about like that.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr. Burr):

Q. Mr. Stewart, how long have you been either a head miner or section foreman or stope foreman?

A. Well, Mr. Burr, the best of my recollection about nine or ten years.

Q. Nine or ten years?

A. Ever since '31 or '32, somewhere around there.

Q. Before that what were you? Were you a driller?

A. Drill runner before that and before that I was drill helper, and before that I did practically every kind of mining labor there was—

Q. In the mine?

A. Timber helper, track helper, pipe.

Q. During all that time have you been getting into the mine and your working place the same way, riding down on the skip and walking to your working place?

A. Yes, sir.

Q. Up until May 1, 1941, when you were working ten hours a day, you were paid on ten hours a day, and when you were working eight hours a day you were paid on eight hours from the time you got to your working place?

A. I don't quite get you there.

Q. Let's start with eight hours; that is back far enough. That was about 1933 you began working eight hours?

A. Back under N. R. A.

Q. Your pay began at 6:45 in the morning?

A. I don't know when it began, Mr. Burr. I checked in about six o'clock.

Q. You didn't get paid from six o'clock?

A. Got paid for eight hours.

Q. The juice was turned on and work at the face began at 6:45?

A. What is that?

Q. The juice was turned on and the work began at the face at 6:45?

A. Mr. Burr, always, as a general rule, the electrician rode the first drag down. He didn't start the generator until he got there.

Q. You didn't have a regular time to turn on the generator?

A. No, sir.

Q. About what time did you start it?

A. If he caught the first drag; I imagine it was about 6:15; if he missed it and caught the next one it would be about 6:25. Of course, there have been times—

Q. What time did you get to your working place?

A. If I rode the first drag, at about 6:30.

Q. If you caught the second drag, what time did you get there?

A. About ten minutes later. There have been times I rode the last drag, being outside talking to the mine foreman, and I would run a little late.

Q. You would get there between 6:30 and 7:00 o'clock?

A. Yes, sir.

Q. When you got through shooting in the afternoon—you shot at 3:10?

A. On the eight hours.

Q. That is what I am talking about, the eight hours. You had lunch on the company's time?

A. Well, that was the company's rule. Sometimes we shot before that.

Q. You shot before three o'clock?

A. Not before three o'clock.

Q. About three o'clock?

A. About that.

Q. You think you shot about three o'clock?

A. Well, about that.

Q. That is the last thing you did? After you shot you went on to the hoodlum and caught the drag out you got there in time to catch?

A. Yes, sir.

Q. Of course, your helpers,—I mean by that the loading part of the crew,—they oftentimes left the place even before you shot?

A. I try to make it a practice to get them out of the way before I blast so I would know they would be safe.

Q. If you blasted on an average at three o'clock, they would leave a little before three o'clock?

A. Well, about five minutes.

Q. They would get down and be in position to catch the first drag out that ran about 3:15?

A. Well, probably. Sometimes they would have to carry some bars down. They had to carry the oil cans.

Q. What was the place you worked at you said you thought was about three-quarters of a mile away?

A. The left man way, it was known then. Now it is known as the south haulage.

Q. The south haulage?

A. Yes, sir.

Q. Have you been in that place some time?

A. Since October 1, 1938.

Q. Now, of course, as head miner, you are in charge of your crew while you are in the stope?

A. Yes, sir.

Q. And the mine foreman or the assistant mine foreman—they don't come up there except maybe once a day, or about how often do they come up there where you are?

A. They try to make it a practice of coming once a day, but there have been times maybe I wouldn't see them but once a week.

Q. Sometimes you wouldn't see them but once a week?

A. Yes, sir.

Q. And when they would come they always came after you started to work, I suppose?

A. Yes, sir, it was always after we had started to work

Q. Now, when you were working up there, if you would happen to run out of oil or wedges or hangers or jackhammer steel or quarry bars, you would send your men back to get it?

A. I never did make a practice of running out.

Q. That is what I am getting at—

A. It wasn't my job to run out.

Q. In order not to run out of the material, back before they put it in the carbide house, when it was taken down there, you would get there with your crowd pretty early in the morning and endeavor to get your share of it?

A. How was that?

Q. When they brought it down before they started putting it in the carbide house—

A. Very seldom they brought it in there.

Q. When they brought it you would get your part of it?

A. They would issue us out about three hangers and about a dozen and a half wedges.

Q. How often was that done?

A. Up prior to May 1st, about three times a month, the best of my knowledge, on our shift.

Q. You mean three times—

A. My buddy, he uses the same wedges I do. They might have done that on the other shift; I don't know.

Q. You got them for a while at the supply house, didn't you?

A. At the shop.

Q. At the shop?

A. Yes, sir.

Q. That opened at 6:30?

A. Yes, sir.

Q. When you got them from there you would send one of your men down to the supply house or shop and he would be there at 6:30 when they opened and get what

you needed and either bring it up on the truck or bring it up himself, and carry it down; is that the way you did it?

A. No, sir.

Q. How did you do it?

A. I would always make it a practice, on the night shift I would get a requisition for this material, for the hangers and wedges and E-hooks, and take it to the supply house and bring it back and put—take it in my car and put it in the back end and carry it up and throw it out and tell my men, "There it is, carry it down. I have done my part of it."

Q. That is the way you did it?

A. Yes, sir.

Q. How often did you do that?

A. Around once a month, I imagine; sometimes not that often. They would go by there—

Q. How many of your men would it take, after you have done your part, for them to do their part?

A. Oh, about three or four.

Q. That would be sometimes longer than a month apart?

A. Yes, sir.

Q. All right. Then there was a time there when they kept a supply of these C-hooks and hangers and wedges at the carbide house; do you remember that?

A. Well, as a rule ever since the incentive plan was put on they would be kept there. But that is the reason we had to go to the supply house after them. They didn't keep a supply on hand. I don't mean each and every month I had to go to the shop or supply house, because sometimes I could get them at the carbide house.

Q. When you got them at the shop you couldn't get them until 6:30?

A. I just told you I never got them in the day time.

Q. Wasn't there a time when you had to get a requisition from the mine foreman and get them at the carbide house?

A. How is that?

Q. Wasn't there a time when you had to get a requisition from the mine foreman and get them at the carbide house?

A. I have always had to have a requisition to get them anywhere.

Q. But you got them in the carbide house?

A. Yes, sir.

Q. How long did that last?

A. How long did that last?

Q. Yes.

A. Well, ever since the incentive plan has been in effect up until a short time ago.

Q. Is that the same time where they had this basket on the front of the skip they put this stuff on when they would bring it from the carbide house?

A. I don't think they had that basket on there so long. The best of my knowledge,—I wouldn't be positive,—there was an accident caused by material—the men trying to load up on the skip, someone jumped on a piece of material and that was why that basket was put on the bail.

Q. Did anybody tell you why it was put there?

A. Sir?

Q. Did anyone tell you why it was that basket was put there?

A. It seems like somebody did.

Q. Who told you that?

A. I don't remember just who did.

Q. Do you remember whether or not the head miners requested Mr. Carter to have it done so they wouldn't be without stuff by the other head miners getting more than their share down below?

A. How do you mean that?

Q. Do you know whether or not the placing of these supplies at the carbide house and the putting of the baskets on the skips followed some complaints from the head miners made to the mine foreman about not being able, at the underground place, to get sufficient of the supplies, because other head miners were getting there first and getting most of them?

A. Well, it was my understanding, Mr.—

Q. Well, do you know about that or not?

A. Well, I couldn't—I don't—I haven't seen it put in writing anywhere, Mr. Burr.

Q. I know, but who told you about the understanding? You said you had some understanding about it.

A. I understood it from the management.

Q. Who was it? That is what I want to get?

A. I don't recollect whether it was Mr. Carter,—it might have been. I was around the office a right smart. The way I understood it—

Q. I want to know who you understood it from first.

Mr. Harris:

He has answered.

Mr. Burr:

I don't think he has.

The Court:

He said it may have been Mr. Carter.

Q. If it wasn't Mr. Carter, who was it?

A. I couldn't say.

Q. Was it the mine foreman?

A. No, it wasn't the mine foreman.

Q. Was it Mr. Ball?

A. No.

Q. What did Mr. Carter tell you, if it was Mr. Carter? What did he tell you?

A. Well, it was beneficial—the way it was—when the incentive plan went into effect, it would be beneficial to the men to have their supplies and everything right there and change clothes and come out and get their carbide and wedges and hangers and things and go right on to work, and they wouldn't have to be running down to the supply house to get them, or here and yonder, and sending a truck up to Number 6 with a can of wedges, fifty or seventy-five, and the same thing at Number 4. The first head miner or crew up there got the majority of them.

Q. You get that understanding, do you know, from Mr. Carter?

Mr. Harris:
He didn't say that.

Mr. Burr:
He said—

The Court:
You said you didn't know?

The Witness:
Yes, sir.

The Court:
Do you know?

The Witness:
No, sir.

Q. That is the understanding you had about it?

A. Yes, sir.

Q. Mr. Stewart, the oil, for instance, just as an illustration you say it one time they had an oil station down

there where the men would take their cans and get the oil?

A. About 150 feet across from the man loading place.

Q. And later at your mine they changed that and put the oil drums up nearer your working place?

A. I kept on after the mine foreman—I couldn't say about the other places because I am practically off in a mine by myself—

Q. About your own place, then?

A. I kept on after the mine foreman to get oil up there, and about a year and a half or a year ago the mine foreman decided to put it up there. I mentioned it to Mr. Carter once when he was there. I don't know whether he recollects it or not, but I do.

Q. How long have you had a drum up there?

A. About a year.

Q. The way you got it before that, one of your section helpers would bring the empty can down at the end of the shift and hide it at the oil house, or leave it there somewhere, and when he came back on the next shift he would get that can filled and carry it on back to his working place. Is that the way you did it?

A. Yes, sir.

Q. If oil gave out or wedges gave out during the day, you could send your men to get them?

A. I never did let that happen.

Mr. Burr:

All right; that is all.

Mr. Harris:

That is all.

(Witness excused.)

Mr. Harris:

Call Mr. R. E. Lemley.

2695 R. E. LEMLEY, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. What is your name?

A. R. E. Lemley.

Q. How old are you?

A. 29.

Q. Where were you born?

A. Jefferson County.

Q. How high did you go in school?

A. Through the seventh.

Q. What work do you do?

A. I am a skip tender.

Q. Where?

A. Wenonah, Number 7 mine.

Q. How long have you been a skip tender at Wenonah Number 7?

A. About two years.

Q. What did you do before you became a skip tender at Number 7?

A. I was a skip tender at Number 9.

Q. Is Number 9 very far from Number 7?

A. About three quarters of a mile.

Q. During the two years you have been skip tender at Number 7, up to May 1, 1941, what time did you report to work in the morning on the day shift?

A. At six o'clock.

Q. If you were on the night shift did you report at six o'clock in the afternoon?

A. Yes, sir.

Q. Is the only difference—the substantial difference between the day shift and the night shift the mere matter of time when they start?

A. Yes, sir.

Q. When you reported for work at six o'clock, did you have any way—any brass check or anything you handed in to anybody?

A. Yes, sir, I had a brass check.

Q. Where did you hand it in?

A. At the window.

Q. The tally house window?

A. Yes, sir.

Q. At the time you did that were you in your work clothes?

A. Yes, sir.

Q. As skip tender at Number 7, what time, during these two years, did you start running the skip?

A. Six o'clock.

Q. How many trips did you run to get the men down into the mine?

A. About four.

Q. Did your skip haul service men and production men?

A. Yes, sir.

Q. That skip out there—have you seen the pictures that we have of the skip here?

A. No, sir, I haven't.

Q. Did you see these men illustrate the other day how they rode the skip?

A. Yes, sir.

Q. Up here in Court?

A. Yes, sir.

Q. Did they illustrate it the way the men on your skip rode it?

A. No, sir.

Q. Is that the kind of skip you had at Wenonah Number 7 (exhibiting picture to witness)?

A. Yes, sir.

Q. What is the difference between the way they illustrated they rode on their skip and the way the men on your skip rode their skip?

A. The men in our skip didn't get quite as low. In other words, they hooked themselves more like this (illustrating).

Q. Did any of the men in your skip squat as low as they did?

A. Yes, sir, the first three men.

Q. How about the next three?

A. They faced them.

Q. And how about the next three?

A. They would lock around their waists this way (illustrating).

Q. And would they lock around the waist that way clear back to the end of the skip?

A. Yes, sir.

Q. Was that the usual and customary way of riding the skip?

A. Yes, sir.

Q. During these three years was the company running Number 7 on a five day week?

A. Yes, sir.

Q. What time did you start hauling the men out of the mine?

A. About 3:15.

Q. What time did you finish?

A. About a quarter to four.

Q. Did the men carry any tools with them on your skip?

A. Yes, sir, I have seen them carrying tools.

Q. Did you have a pail at the end of your skip for the men to put tools in?

A. No, sir, we did not have.

Q. What tools have you seen them carrying during the two years you have been out there at Number 7?

A. I have seen them carrying jackhammer steel.

Q. Who would let you know, if anybody let you know, when it was time to start down into Number 7?

A. Well, I usually know. My time starts at six.

Q. Usually what?

A. I usually knew my duty.

Q. Did you have to wait for anybody to give you a signal before you started down with your skip?

A. No, sir. We skip tenders attended to that at my mine.

Q. The skip tenders attended to that?

A. Yes, sir.

Q. Well, now, out at Number 7 did you have one of these rods you reach up to touch a wire to signal back to the hoisting engineer if anything went wrong?

A. Yes, sir.

Q. Did you have anything to stop the skip with other than that wire or rod?

A. No, sir. That was all.

Q. Now, as skip tender for those two years, were you paid for eight hours or were you paid for nine hours?

A. I was paid for nine hours.

Q. That means you got eight hours straight time and one hour on time and a half?

A. That is right.

Q. And you went to work the same time the service men and the miners did, and you quit the same time they did?

A. Yes, sir.

Mr. Harris:

That is all; you can take him.

Cross Examination.

(By Mr. Burr):

Q. Mr. Lemley, you have been a skip tender at one mine or another for a good many years, haven't you?

A. No, sir. I have been a skip tender for about—since 1937.

Q. Since 1937?

A. Yes, sir.

Q. Before that time what were you doing?

A. I was running an underground sinking hoist.

Q. Since you have been skip tender you have used the same skip, the same style skip all the time?

A. Yes, sir.

Q. That is just used to haul the men in?

A. And ore.

Q. You don't handle them together?

A. No, sir.

Q. You deposited your brass check the same way the other men did?

A. Yes, sir.

Q. You have been getting time and a half over the whole period of time—you have been a nine hour man?

A. Yes, sir.

Q. The signals you give—you don't start the skip or stop it at all, but when you want to start or stop it you give the required signals the rules require you to give?

A. Yes, sir.

Q. And that gives a signal to the engineer and he handles it and starts and stops it?

A. Yes, sir.

Q. You had a half hour for lunch?

A. Yes, sir.

Mr. Burr:

All right; that is all. Wait a minute.

Q. You say you got paid for nine hours? You started to work at what time now?

A. Six o'clock.

Q. And the first thing you did was to make a test trip?

A. That is right.

Q. You had to get the skip off the side track and test it out?

A. Yes, sir.

Q. And then after that you started to work hauling the men down?

A. Yes, sir.

Q. That was your job?

A. Yes, sir.

Q. And then you continued—you took the skip down. Did you come back with it or not?

A. No, sir. I would carry the first trip down, always.

Q. Then when you carried the first trip down to the bottom, then what work did you do?

A. When the men unloaded I would send the skip back.

Q. Then what did you do down there?

A. I would stay until the next load of men arrived.

Q. Then what did you do?

A. I unloaded them and sent the skip back.

Q. And you continued to do that until all the men were down?

A. Yes, sir.

Q. Then what did you do, start hauling ore?

A. Take this safety body off and start hauling ore.

Q. You quit hauling ore about what time?

A. 3:15.

Q. And then you took the men out at 3:15?

A. Yes, sir.

Q. Are you on the outside or inside when you quit hauling ore?

A. Inside.

Q. And then you hauled the men how long?

A. Until about a quarter of four.

Q. 3:45?

A. Yes, sir.

Q. That would be the end of your day's work?
A. Yes, sir; sidetrack the skip.
Q. And you had thirty minutes for lunch?
A. Yes, sir.
Q. You got paid on nine hours basis, eight hours straight time and one your time and a half over time?
A. Yes, sir.

Mr. Burr:
That is all.

(Witness excused.)

Mr. Harris:
If the Court please, I believe that is all,—It may be I have overlooked something,—but I think that is all the witnesses I expect to call from the T. C. I., and then that one matter further which I mentioned—I will point that out on Monday or Tuesday.
Now, I am going ahead with either the Sloss or—

The Court:
I don't believe we will take up another witness today. We took up a matter here yesterday afternoon I am ready to pass on.

Mr. Harris:
So far as I am concerned, my motion was—

The Court:
These demands made to produce,—where is the original? That is made by Republic Steel Corporation.

Mr. Burr:
What is that?

The Court:
That is the Republic Iron & Steel Company.

Mr. Burr:
To do what?

The Court:
It is a subpoena directed to the Republic Iron & Steel Company, a subpoena requesting them to produce certain matter.
Is that to the Republic Iron & Steel Corporation?

Mr. Burr:
I guess it is. I never had seen one—

The Court:
They are alike. There are three, Tennessee Company, Sloss and Republic.

Mr. Burr:
That is right. That is the first one that was filed?

The Court:
Yes, sir.

Mr. Burr:
By the administrator?

The Court:
Yes, sir. Then here is one directed to the Tennessee Coal, Iron & Railroad Company and Mr. E. B. Ball as general superintendent of the Tennessee Coal, Iron & Railroad Company.
I think—Number 1 has been answered, I think. That is with reference to the notations on that map.

Mr. Burr:
Yes, sir.

The Court:
"Maps with figures indicating the progress made in each heading of the iron ore mines of the Tennessee Coal, Iron & Railroad Company since 1936.

"2. Statistics showing the change in the rates of pay of the men working in the iron ore mines of the Tennessee Coal, Iron & Railroad Company through the years since it has been in operation."

Well, I think that is most too far-reaching and goes back too remote. I think probably it would be all right for the last ten years.

Mr. Harris:
Well, I will modify it and ask for—

The Court:
It is not so set out here. I have my doubts whether I can limit it—

Mr. Harris:
I have my doubts about it too.

The Court:
I thought there might be an agreement.

Mr. Burr:
My motion is to quash this subpoena.

The Court:
Well, it is granted as to Number 1 and refused as to Number 2.—No; I should say it is refused as to Number 1 and granted as to Number 2.

Mr. Burr:
What is Number 2?

The Court:
That is asking for the change in the rates since the company was organized.

Mr. Burr:
Would Your Honor read it to me so I can—

The Court:
"Statistics showing the change in the rates of pay of the men working in the iron ore mines of the Tennessee Coal, Iron & Railroad Company through the years since it has been in operation."

Mr. Burr:
Does Your Honor—

Mr. All:
Isn't that the one you are going to grant the motion—

The Court:
I just said I was going to grant the motion. It is refused as to three.

Mr. Burr:
What is three?

The Court:
Have you got a copy of these?

Mr. Burr:
No, sir.

The Court:
All right. I will read it.

"All proposals, agreements, contracts, and requests submitted to Tennessee Coal, Iron & Railroad Company in writing by your ore mine employees or by any representatives of said employees, relating to terms of employment, hours and working conditions, and copies of all your replies thereto between January 1, 1933, and the date hereof.

Mr. Burr:

I stated to Your Honor yesterday we have offered every one in evidence we have got. That has already been done.

Mr. Harris:

The reason I asked it was on account of the proposition of the six-hour day one.

Mr. Burr:

There has never been a six-hour day one.

Mr. Harris:

There certainly has.

The Court:

If you have it, produce it.

Mr. All:

You don't mean this to apply to the Sloss?

Mr. Harris:

I only addressed the subpoena to the Tennessee Company.

The Court:

Tennessee Coal, Iron & Railroad Company.

Four,—this is granted, Mr. Burr, if you can produce it.

Mr. Burr:

All right, sir. If we have got it we will be glad to produce it.

The Court:

"4. All records, minutes, and correspondence recording or relating to conferences and meetings with your ore mine employees or with any representatives of said employees at which there was mentioned or discussed payment for any part of the time spent daily by said employees prior to reaching or after leaving the 'face'."

Well, now, you have already—

Mr. Burr:

Yes, sir, we have offered that and are going to offer all the others for each division.

The Court:

If you have any more—

Mr. Burr:

Yes, sir, that is all right.

The Court:

"5. Records for all your ore mine employees of total ore production for the following periods: (a) The year 1923, (b) The year 1933, (c) The year 1940, and (d) January 1, 1941, to date, by month; all tipple and other tonnage records of production of ore in your mines for each year and each month between October 24, 1938, and the date hereof."

The motion is refused as to Number 5.

Number 7,—it is refused,—which reads:

"All working diagrams and maps of your red ore mines—"

Now, there is some of that that has probably been furnished on your maps.

Mr. Burr:
That—is that refused?

The Court:
No, I am going to grant this. I think they are entitled to know the ventilation system.

Mr. Burr:
We have described it.

The Court:
Can't that be indicated on the maps?

Mr. Burr:
Does Your Honor mean you want us to go back and get the maps and indicate it on the maps?

The Court:
"All working diagrams and maps of your red ore mines described in the complaint showing:

"(a) The ventilation system in the mines;

"(b) The haulage systems in the mines;

"(c) The location of present operations at the 'face';

"(d) Manways, passages and haulage ways used by your employees in going to and from the 'face', giving distances, slopes, gradients, and descriptions of manways and passages."

Mr. Burr:

To get all he asks for in that thing there would probably take—I don't know what he wants with it. It looks to me like it is an imposition on anybody to get up that sort of stuff.

The Court:

Seven is granted.

Eight is refused,—that is refused on seven, I should say.

Eight, your motion to quash is granted, which reads:

"All records of blast furnace loadings for each year and each month since October 24, 1938."

Mr. Burr:

Our blast furnace loadings—

The Court:

I am granting your motion to strike that on the ground it reads, "All records of blast furnace loadings." It don't say what, coal, iron or dolomite.

Mr. Harris:

That is my fault, Judge.

The Court:

The motion is granted as to nine, which reads:

"All production schedules for each year and each month since October 24, 1938."

Mr. Burr:

Production schedules?

Mr. Harris:

Judge, I withdraw that as to nine, because it is not clear.

The Court:
It covers other things other than ore.

Mr. Harris:
I withdraw that.

The Court:
The motion to quash is granted.
Number 10, the motion to quash is granted.
Number 11, the motion to quash is granted.

Mr. Harris:
Did the reporters take down what the Judge said?

Mr. Burr:
If I have got it right, I have got 3, 4, 5, and 7 are the ones you said you wanted me to produce if we have them.

The Court:
I have granted the motion to quash Number 2. That is with reference to statistics—

Mr. Burr:
If Your Honor will tell me which ones you said for me to produce—

The Court:
Three.

Mr. Burr:
Four?

The Court:
Four.

Mr. Burr:
Five?

The Court:
Five.

Mr. Burr:
Seven?

The Court:
Seven.

Mr. Burr:
Any others?

The Court:
That is all. Here is—as to each of the companies.

Mr. Burr:
I want to take an exception, of course, as to each one you have required.

The Court:
All right, sir.

Mr. Burr:
I call attention to the fact, I don't see just how, on a motion of this sort,—it looks like to me a subpoena that is burdensome—I don't see how it is that you can take a subpoena that is burdensome and let someone decide which should be produced.

The Court:
I am looking at it from that standpoint too.

Mr. Burr:
It is the whole thing—,

The Court:
The Tennessee Company has its records for several years, many years for that matter?

Mr. Burr:

We have them ever since we have been running, I suppose.

The Court:

These things that have been called for and have been granted, I can't see it would be any great hardship to get those figures.

Mr. Burr:

I don't know what they want. It is so uncertain and so indefinite—Of course, the ones about the minutes, I understand, but to come and ask about schedules,—I don't see—then, the point Your Honor has already ruled six or seven items are burdensome. Then, how can you take a subpoena we are moving to quash as a whole—

The Court:

Six or seven out of a dozen.

Mr. Burr:

You have sustained a motion to quash all of the items of the subpoena, except three, four, five and seven.

My motion to quash is as to the whole subpoena.

The Court:

Those paragraphs, I don't think, are burdensome.

Mr. Burr:

We haven't asked for those paragraphs to be quashed. We asked to quash the whole subpoena.

Mr Harris:

You move to quash the whole subpoena?

The Court:

Then I overrule the motion as to each part.

Mr. Burr:
And then we take an exception.

"Records for all your ore—"

I want to find out what we are after.

Mr. Harris:
I object to him holding us here while he tries to find out what a subpoena means. He has studied it and filed objections, and the Court has ruled on it.

Mr. Burr:
I want to obey the Court, if I can.

The Court:
Read that one.

Mr. Burr:
"Records for all your ore mine employees of total ore production for the following periods: (a) The year 1923, (b) The year 1933, (c) The year 1940, and (d) January 1, 1941, to date, by month;—"

The Court:
That is plain, isn't it?

Mr. Burr:
It is not to me. It says, "Records for all your ore mine employees of total ore production."

Mr. Harris:
I want the production for each mine.

Mr. Burr:
It says, "Production for all your ore mine employees."

The Court:
Let me see that.

Mr. Burr:
If that is not plain English, I can't read it.

Mr. Harris:
That is very clear.

The Court:
"Records—" Just a minute,—"Records for all your ore mine employees of total ore production for the following periods: (a) The year 1923, (b) The year 1933, (c) The year 1940, and (d) January 1, 1941, to date, by month; all tipple and other tonnage records of production of ore in your mines for each year and each month between October 24, 1938, and the date hereof."

That is total ore. That is just a record of total ore mined by your employees.

Mr. Harris:
That is all I want. I don't care how much Tom Jones produced and how much Bill Smith produced.

Mr. Burr:
Construing it that way, does Your Honor want me to bring here in Court the records—

The Court:
It don't ask for the records. It just asks for the figures.

Mr. Harris:
I just want the totals.

The Court:
The records that show the totals of the mines. You don't have to have all your books, I shouldn't think.

Mr. Burr:

You want me to bring—is it down now where I can bring the total of the production for each year from 1923 on to 1940?

The Court:

Yes, sir, and it says, "month" down at the last.

You have got that tallied up by months and years, I imagine. I never have seen them.

Mr. Burr:

I haven't either.

The Court:

I am sure you have.

Mr. Burr:

I am sure if we get them we will have to tally them up.

The Court:

No; you have got your total production for each year, a company like the Tennessee Company.

Mr. Burr:

Now, seven. "All working diagrams and maps of your red ore mines described in the complaint showing:

"(a) The ventilation systems in the mines."

"All working diagrams and maps."

Does that mean we have to bring in every diagram and map—

The Court:

Whatever you have made. You don't have to go and make them.

Mr. Burr:

Well, suppose we make four or five a year? What do they want to know? Do they want a present map of our ventilation system?

The Court:

Yes, sir.

Mr. Burr:

Is that all he wants?

The Court:

That is one thing.

Mr. Burr:

Anything else?

The Court:

I don't remember the question.

Mr. Burr:

"7. All working diagrams and maps of your red ore mines described in the complaint showing:

"(a) The ventilation systems in the mines;"

"(b) The haulage systems in the mines—"

The Court:

That means where you haul your ore.

Mr. Burr:

Does it mean working diagrams and maps now of all these we have had since we started operating the company?

The Court:
I take it up to May 1, 1941.

Mr. Burr:
Since the company started operating?

The Court:
No; probably as of May 1, 1941.

Mr. Burr:
It doesn't say that.

The Court:
Let's see what it says.

Mr. Burr:
It says, "All working diagrams and maps of your red ore mines."

I think the burden is on a man, when he asks for a subpoena, to show what he wants.

The Court:
I think your ground there is well taken.

Mr. Harris:
Judge, we are not asking and we don't mean—

The Court:
I think it would be burdensome to bring all the maps.

Mr. Harris:
I don't want anything except as of the date of the subpoena. I am not interested in the diagrams ten or fifteen years ago.

Mr. Burr:
That is what he asked for.

The Court:
"All working diagrams."

Mr. Harris:
That is present working diagrams,—not old diagrams.

Mr. Burr:
I haven't got the least idea in the world what that thing means.

Mr. Harris:
I am not asking for—.

Mr. Burr:
If what he wants is a map of our present ventilation system, of our present haulage system, why, we can get it for him, but that is not what he asked for.

The Court:
I think, Mr. Burr, on further reflection over it, it reads, says, "All working diagrams,"—not all work, but all working diagrams—

Mr. Burr:
So I am to know what we are to do, does Your Honor construe it to mean we bring as of the present time the maps showing—

The Court:
In the recent past.

Mr. Burr:
What date?

The Court:
In other words, I don't think you have to go to any work furnishing them. What you have, bring them.

Mr. Burr:
Any maps we have prepared—

The Court:
Up until the time of the service of this subpoena.

Mr. Burr:
Ed, do you understand what he means?

Mr. E. M. Ball:
They are already in evidence.

The Court:
Do they show the ventilation system?

Mr. E. M. Ball:
All we will have to do is take a pencil and mark them.

Mr. Burr:
We will work that out by Monday.

The Court:
These others,—there are three others.

Mr. Burr:
That was issued by the intervener?

Mr. Cooper:
That was issued by the intervener. I think I have marked on that what is identical.

The Court:
Number 1—

Mr. Cooper:

That is identical with the request you have just ruled on.

The Court:

I overrule the motion to quash.

Also as to Number 1 and Number 2, I overrule the motion to quash.

Mr. Cooper:

We have abandoned Number 3.

The Court:

Number 3 it is granted.

Number 4, motion to quash is overruled.

5, the motion to quash is granted.

Number 6, the motion to quash is overruled.

Number 7, the motion to quash is overruled.

Motion to quash Number 8 is granted. That is out.

And also on Number 9,—the motion to quash Number 9 is granted.

The motion to quash paragraph 10 is overruled.

Motion to quash paragraph Number 11 is granted.

Motion to quash paragraph 12—Now, that is of production schedules for each year, and that is too broad.

Mr. Cooper:

Yes, sir, that is—

The Court:

It is granted as to that, Number 12.

Number 13,—motion to quash Number 13 is refused. I mean it is denied and overruled. That is as to schedules and records of development work in your red ore mines since October 24, 1938. I think perhaps that has been shown on the maps.

Mr. Burr:

I don't know what it means. We have given them a map showing it. What does the word, "schedule" mean? I don't know.

Mr. Cooper:

I think that has a very definite meaning among the operators.

Mr. Burr:

If it has, I haven't learned it in thirty years.

The Court:

14, the motion is granted.
15, the motion is granted.
16, the motion is overruled.
17, the motion is overruled.
18, the motion is granted,
19, granted.
20, overruled.
21, overruled.
And motion to quash 22 is granted.

Mr. Cooper:

Judge, I think in 22 we particularly refer to certain studies.

Mr. Burr:

Your Honor, we take an exception to the overruling of the motion as a whole, just as we did in the other, and a separate exception to the overruling of our motion as to the sections you have said we should answer.

The Court:

All right.
I think that is all now.

Tomorrow is Saturday. We want to have Court in the morning. I would like to run up until about one o'clock, or 12:30.

Mr. Burr:
Judge,—

The Court:
In other words, here is the thing, Mr. Burr: It looks like we will be in this case a good while this summer.

Mr. Burr:
Judge, we had better come out alive when we get through with it.

Mr. Harris:
I can tell you what I think we can do.

Mr. Burr:
He has finished with his mines.

Mr. Harris:
With Tennessee.

Mr. Burr:
He has Sloss and Republic.

Mr. Harris:
What I think it would do, it would expedite the—what we can do,—with the couple of days we had intended culling out our witnesses. We had planned to work Saturday and Sunday. I think we can save the time of the Court and everybody if I have an opportunity to check on my Sloss and Republic witnesses,—I think I can save time.

However, if Your Honor wants to go ahead.

The Court:
Well, if it suits both of you—

Mr. Harris:
It will save time.

Mr. Burr:
He is not only entitled to it, but I think you will have a doctor's certificate if we—

The Court:
We have been doing pretty good. We—

Mr. Burr:
The hours we haven't been working here, we have been working outside. I have been in my office every night since this thing started, and I have worked every Sunday since this thing started.

Mr. Harris:
Leaving out the interests of the lawyers, I think we can serve the interests of the Court by having an opportunity of talking to the witnesses. We have gone much more rapidly than I expected to go today. I have finished with the Tennessee Company mines.

The Court:
Then we will not have Court tomorrow, and adjourn until 9:30 Monday morning.

(Whereupon, at 4:50 P. M., July 25, 1941, an adjournment was had to 9:30 A. M., July 28, 1941.)

July 28, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:

I want to say to counsel about the rulings on the subpoenas duces tecum the other day that since the Attorney General has requested all District Judges to furnish him with a copy of all rulings under the new procedure, I think it would be better for the litigants to have what I ruled on put in a written order and signed, and each one of you given a copy. That will be as of Saturday.

Are you ready?

Mr. Harris:

Call Mr. Lilly.

2718 ATLEE LILLY, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:

What is your name?

The Witness:

Atlee Lilly.

The Court:

Atlee Lilly?

The Witness:

Yes, sir.

The Court:

L-i-l-l-y.

The Witness:

Yes, sir.

(By Mr. Harris):

Q. Mr. Lilly, how old are you?

A. Twenty-eight.

Q. What—Where were you born?

The Court:

What?

The Witness:

Sir?

The Court:

How old did you say you were?

The Witness:

Twenty-eight.

Q. Where were you born?

A. Born in Tempson, Texas.

Q. You work for the Sloss-Sheffield Steel & Iron Company?

A. Yes, sir.

Q. I will ask you to look at this picture—

Mr. Ali:

Let me see it.

Mr. Harris:

I will show it to you in just a second.

Q. Do you recognize that as the picture of one of the mantrip cars at the Sloss Mine?

A. Yes, sir. I can tell you every man on there.

Mr. Harris:

We offer in evidence, if the Court pleases, as Defendants' next exhibit—

The Clerk:
Defendants' 19.

Mr. Burr:
Is that just general 19, or the Sloss Company.

The Court:
19 for the Sloss Company.

The Clerk:
No, sir, Defendants' Exhibit.

Mr. Harris:
As to the Sloss Company, I suppose.

The Court:
Exhibit 19?

Mr. Harris:
Yes, sir.

The Court:
For all defendants?

Mr. Harris:
We are offering it for all defendants, but I assume the conditions in the Sloss Company wouldn't have any bearing on the conditions in the Tennessee Company.
We think they all have a bearing.

Mr. Harris:
You think it has a bearing on all?

Mr. Burr:
Yes, sir.

Mr. Harris:
I thought you were asking me to limit it as to the Sloss Company.

Mr. Burr:
No, sir. I just wanted to get the number.
We would like to know when the picture was taken.

Mr. Harris:
It was taken in the past two weeks.

Mr. Burr:
By whom?

Mr. All:
By whom was that picture taken?

Mr. Harris:
Well, I am not ready to go into that yet.

(Thereupon photographs, showing a loaded man car was marked Defendants' Exhibit No. 19.)

Q. Mr. Lilly, have you ridden on that mantrip at the Sloss Company?
A. Yes, sir.
Q. Is that the man trip that goes down the main slope into the mine?
A. Yes, sir.
Q. What mine is it?
A. Number 2.
Q. Were you riding on that man trip during the present month?
A. Yes, sir.
Q. When you received an injury?
A. Yes, sir.

Mr. All:
We object to that, if the Court please.

The Court:
Overruled.

Q. Were you going in the mine or coming out of the mine?

Mr. All:
The same objection.

The Court:
Overruled.

A. Coming out.
Q. I notice you have a bandage—

Mr. All:
May it please the Court, to save time, may it be agreed I have an objection and exception to all these questions?

The Court:
That is understood.

Mr. All:
On behalf of all these plaintiffs?

The Court:
That is understood.

Q. I notice you have a bandage on your head. Is that the injury you received coming out on the mantrip from Sloss Mine Number 2?

A. Yes, sir; that is part of it. It has gotten well now.

Q. Was that man trip you were riding on the same one that had been in use out there since 1938?

A. The one I was riding wasn't.

Q. How long had the one you were riding on been in use?

A. Since the last contract was signed, since May 1st.

Q. Was it like the ones that had been in use there?

A. Yes, sir.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr. All):

Q. Mr. Lilly, how long have you been working out at the Sloss Company?

A. Soon will be five years.

Q. Soon will be five years?

A. Yes, sir.

Q. How do you ride on this man trip? Do you stand up or sit down?

A. Sit down.

Q. Were you sitting down when you got hurt?

A. Yes, sir.

Q. How did you get hurt?

A. You have to bend over going under the rocks. I thought I was out from under the rocks, the row of rocks, and I raised up and got my head hit.

Q. How long have you been riding that trip, Mr. Lilly?

A. Since May 1st on that trip.

Q. I mean ones just like it.

A. Since I have been at Sloss.

Q. How long have you been at Sloss?

A. Five years.

Q. Have you been riding under the same roof you got hurt on on this occasion?

A. Since May 1st, the same roof.

Q. I mean have you been riding on man cars just like that?

A. Yes, sir.

Q. In the same place you were riding ~~in when you got~~ hurt?

A. No, sir, since May 1st.

The Court:

You mean to say you hadn't been riding on that slope except since May 1st?

The Witness:

Yes, sir.

Q. You never rode in there before?

A. No, sir.

Q. Anybody else get hurt on that trip?

A. No, sir.

Q. You haven't gotten hurt any other time since May 1st, have you?

A. No, sir.

Q. You haven't seen anybody else get hurt in there since May 1st, have you?

A. I have seen them bump the top. They haven't gotten injured.

Q. Who have you seen get injured in there?

A. A fellow by the name of Coe.

The Court:

Coe?

The Witness:

Yes, sir.

The Court:

Coe or Cole?

Mr. Quinn:
Coe.

The Witness:
I don't know.

Q. You say he didn't get hurt?
A. He said he bumped his neck, but he wasn't off.
Q. Do you know whether anybody reported it?
A. No, sir.
Q. When was that?
A. It has been two or three months ago.
Q. Who else?
A. Mr. Gleason.
Q. Who is he?
A. A fellow that works out there.
Q. What does he do?
A. Tram engineer.
Q. Did he hurt himself?
A. He bumped his head, skinned his head a little bit, but he didn't—
Q. He worked on the tram at that time?
A. Yes, sir.
Q. When was that?
A. That was two or three months back. I couldn't recall the date.
Q. Now, how did you get in the mine before May 1, 1941?
A. Walked.
Q. Walked?
A. Yes, sir.
Q. You didn't ride the trip at all?
A. Rode the first one. This was the second trip.
Q. This was the second trip?
A. Yes, sir.
Q. Did you walk all the time before?
A. After I got off the first trip, I did.

Q. I mean by that during all the four or five years you worked there, you never had ridden on this first trip?

A. Second trip.

Q. Well, had you ever ridden on the first trip before?

A. Rode the first trip all the time.

Q. Rode the first trip all the time?

A. Yes, sir.

Q. And you never got hurt on that first trip?

A. No, sir.

Q. Never did?

A. No, sir.

Q. What is your kind of work, Mr. Lilly?

A. Drag engineer.

Q. What is that?

A. Drag engineer.

Q. That is, you are one of the production men?

A. What?

Q. You are a production man?

A. Drag engineer.

Q. Is that in the headings, work in the headings?

A. Stopes.

Q. Stopes? What had been your mining experience before you went to Sloss?

A. None.

Q. Never worked anywhere else?

A. No, sir.

Q. What kind of work have you been doing since you went to Sloss?

A. Drag engineer most of the time.

Q. All the time?

A. About four years; tram engineer before then.

The Court:

Is that all?

Mr. All:

I believe that is all.

Re-Direct Examination.

(By Mr. Harris):

Q. When you talk about the first trip and the second trip, do you mean by the first trip the one you first get on when you go down into the mine?

A. Yes, sir.

Q. And by the second trip do you mean a different ride in a different part of the mine?

A. Yes, sir.

Q. Have they started running man trips in a part of the mine since May 1st in which they were not running man trips before May 1st?

A. Yes, sir.

Q. And it was in this new portion of the mine where they now haul the men that you were injured?

A Yes, sir.

Mr. Harris:

That is all.

Re-Cross Examination.

(By Mr. All):

Q. Let's get that straight again. The company was not running that second trip on which you got hurt before May 1, 1941, was it?

A. Before the last contract was signed.

Q. That is what I mean, before the last contract was signed?

A. No, sir.

Q. Before May—sometime in 1941 or '40. When did they start running the trip in that part of the mine where you claimed to have gotten hurt?

A. It was after the last contract was signed. I don't know the date.

Q. That was in 1940?

A. The second man trip was not running until the contract was signed. Then they put it on.

Q. Until the last contract was signed the company did not operate the man trip in that part of the mine in which you claim you got hurt?

A. No, sir.

The Court:
Is that all?

Mr. All:
That is all.

Mr. Harris:
That is all.

(Witness excused.)

Mr. Harris:
Call Jesse Gaines.

2727 JESSE GAINES (C), being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

What is your name?

A. Jesse Gaines.

Q. How old are you, Jessie?

A. 43.

Q. How high did you go in school?

A. The ninth grade.

Q. How long have you been working in and around the ore mines in the Birmingham District?

A. Off and on since 1914.

Q. What company do you work for now?

A. Sloss-Sheffield Steel & Iron Company.

Q. Have you been working for them since October 24, 1938?

A. I have.

Q. What kind of work were you doing from October 24, 1938, up to May 1 this year?

A. Head miner.

Q. What mine were you working at during that period?

A. Number 1 mine.

Q. What is the name of it? Is it—is that the name it goes by, Sloss Number 1?

A. Yes, sir.

Q. How far is it from Number 2?

A. Oh, approximately a half a mile.

Q. Now, in your work for the Sloss Company as head miner, did you work all the time on a day shift or all the time on a night shift or did you alternate?

A. You mean the last three years?

Q. Yes.

A. Day shift.

Q. You have been working on a day shift?

A. Yes, sir.

Q. Now, in the last three years when did you report at the mine on your day shift?

A. About six o'clock.

Mr. All:

We object, if the Court please.

The Court:

What is that?

Mr. All:

We object to that on the grounds we have interposed to other similar questions; on the ground it calls for a conclusion—

The Court:
Overruled.

Mr. All:
And on the other grounds we have assigned. Except.

The Court:
Overruled. What did he say?

Q. Now, when you got on—

The Court:
When did he report?

The Witness:
About six o'clock.

Q. When you got on the company's premises, where was the first place that you went to?

A. Went to the change house.

Q. What did you do at the change house?

A. Well, we pulled off our—pulled off my clean clothes and put on my work clothes.

Q. And then from the change house where did you go?

A. Goes to Number 2 slope.

Q. And when you got to Number 2 slope, did you have, during that three years, any regular place to which you went?

A. Yes, sir; we went by the tally house.

Q. What did you do when you went by the tally house?

A. Well, I would tell the boss man, "I am here."

Q. And who was the boss man that you would tell, "I am here," a mine foreman or an assistant mine foreman?

A. Well, the mine foreman, and sometimes the section foreman.

Q. And when you told him, "I am here," what, ordinarily, would the section foreman or mine foreman or assistant mine foreman to whom you gave that information,—what did he ordinarily do?

A. Well, on an average he would ask me if all my crew was there, and if for any cause my place was down he would tell me where to go and work that day or go back home or whatever instructions he thought were suitable for the day.

Q. Now, did you have a brass check which you handed in at the tally house?

A. No, sir.

Q. Now, did this section foreman or mine foreman or assistant mine foreman have any time book in his hand or pocket when you said, "I am here"?

A. He did.

Q. What did he ordinarily do when you said, "I am here", with reference to that book?

A. Well, he would check my name.

Q. Then after he checked your name in the book where did you go from the tally house, Jesse?

A. Go to the mouth of the slope.

Q. Go to the mouth of the slope?

A. Yes, sir.

Q. Well, what kind of miners' lamps did you use out there at the Sloss Company?

A. Carbide.

Q. Where would you get your carbide?

A. Well, now, I have bought it at the commissary, at other stores,—private stores. A man can buy it where he pleases.

Q. When you reported to the section foreman or mine foreman and said, "I am here," did you have your lamp on?

A. If I didn't have it on it would be in my pocket.

Q. And have carbide with you?

A. Yes, sir.

Q. Then, when you got up—after you had had these conversations with the mine foreman or section foreman, when you got up to the mouth of mine number two, what did you do then?

A. Well, I waited for the man trip. If the man trip was at the bottom I would wait for it to come back to the top. When it come back to the top I would load up.

Q. Now, the man trip out at the Sloss Company,—I will ask you to look at that picture.

Does that represent the kind of man trip that was in use in the Sloss Company from October, 1938, until May 1, 1941?

A. Yes, sir.

The Court:

Is that the same picture?

Mr. Harris:

Same picture.

Q. When you—Up and between October, 1938, and May 1, 1941, how many of those little cars were in a trip?

A. Six.

Q. And how many men rode on each one of the little cars?

A. Ten.

Q. Now, have they put on more cars or taken off cars since May 1st?

A. Put on more.

Q. How many?

A. Two.

Mr. All:

What did he say?

Mr. Harris:
Two.

Q. Do those extra cars also carry ten men each?
A. Yes, sir.
Q. So, before May 1st, they hauled 60 men down at a trip?
A. Yes, sir.
Q. And now, since May 1st, they haul 80 men down at a trip?
A. Yes, sir.
Q. Jesse, when you got close to the man trip cars, could you get on any car you wanted to, or did you have any instructions about what car to get on?
A. The white men always rode the same car. I didn't ask to get onto that one. I could get in any of the others I wanted to.
Q. What do you mean by the same car?
A. The car the rope was hitched to.
Q. It was hitched to the back end going down?
A. Yes, sir.
Q. You say the white men had the first car?
A. That is right.
Q. And the colored men had the other car?
A. Any below that.
Q. Jesse, in your best judgment, during those three years, what percentage did you colored men make of the total number of employees out at that mine?

Mr. All:
We object.

A. Well, approximately 85 or 90 per cent.
Q. And in your best judgment, how many men, both white and colored were working in the mine out there during those three years?
A. About 460 to my knowledge, or a little bit more.

Q. Now, when you walked up to the mouth of the slope preparatory to getting on a man trip car at the beginning of your shift, was there any fence or enclosure or any kind of gate or anything of that sort you went through?

A. Going down?

Q. Going down.

A. No, sir.

Q. You didn't have any bull pen at the top going down?

A. No, sir.

Q. Now, after the men were on these cars, was any signal of any kind given for the man trip to start?

A. Well, ordinarily the chainer, he do the giving of the signals for the trip to be lowered or hoisted, and when the men would load up, then the chainer would signal the engineer off. He would give him the man trip signal and down we would go.

Q. Now, was that chainer employed by the men or employed by the Sloss Company?

A. Employed by the Company.

Q. How did he give a signal, Jesse, to the engineer at the Sloss Mine?

A. Well, we have two signal wires that run all the way from the bottom of the slope to the engine room, and he had a sharp instrument, something like an ice pick,—it wasn't an ice pick, but something in that shape, he would place on one wire and hit the other like that, and give a signal.

Q. And after he would do that the man trip would start?

A. Start down.

Q. When, during those three years, did the man trip start down?

A. About—Between 6:15 and 6:20.

Q. How long did it take ordinarily to ride from the mouth of the mine to the first man unloading station on that man trip?

A. About eight minutes.

Q. When you got to the man unloading station, then what did you do?

A. Well, we would unload and go on the yard to the foreman's desk. If we needed any supplies we hadn't reported outside, we would report to him what we needed during the day.

Q. You say you would go on the yard. What do you mean by the yard?

A. In going down the slope from the top to the bottom, we would go down to 48. When you get to 48, you had a level place like that. You call that the yard. That is where the foreman has his desk. He is standing there, and in the evening he receives reports from the men and takes orders in the morning.

Q. How far was the yard from the man unloading station?

A. Oh, about fifty or sixty feet.

Q. How far was that yard where you got further orders from the drilling place where you started your drilling?

A. It was approximately a mile. In my judgment, every bit of a mile.

Q. Now, Jesse, how did you get from the yard to your drilling place up until a few months ago?

A. I walked.

Q. In walking, were you going uphill or down hill or on level ground?

A. On all three.

Q. How—have you any judgment as to how much higher the high place in the mines—the highest place is than the lowest place in that mine?

A. Well, the longest hill going from Number 1 back into Number 2 is something like three—3,000 or 3500 feet long over all, the whole hill from the top to the bottom, 84.

Q. Is that a hill that goes on like a straight plank, or does that hill go up and down as you climb?

A. Well, you go on one place that is kind of level like but I would say on an average it was about a 20 degree slope, the principal part of the way.

Q. Then, when you get to the top of that hill, do you walk on a level to your drilling place, or do you start down hill again?

A. No, sir. When I got to the bottom of that incline I went up another a little bit steeper than the one I just went down, but not quite as long as that one.

Q. The first hill you go down the hill?

A. That is right.

Q. And then you get in a valley?

A. Yes, sir.

Q. And then start up a hill to your drilling place?

A. That is right.

Q. Jesse, you say you bought your carbide—

A. Yes, sir.

Q. To use in your lamp?

A. Yes, sir.

Q. Did you buy the lamp yourself or did the Sloss Company buy it?

A. I bought it.

Q. Now, what else during the three years from October 24, 1938, to May 1, 1941, did you buy or furnish yourself or you crew in drilling for ore at the Sloss mine?

A. Well, I bought caps and shoes for myself.

The Court:

What?

The Witness:

Caps and—

Q. What do you mean by caps,—the caps you used in the dynamite or a cap you use on your head?

A. On my head.

Q. Was that a safety cap?

A. Yes, sir.

Q. What about safety shoes?

A. Well, I don't wear the safety shoes, but I bought the other shoes which I wear.

Q. In your crew did you have mechanical loading or fist mucking?

A. Fist mucking.

Q. Did your fist muckers on your crew—what tools do they use?

A. 18-pound rock hammer, picks and shovels.

Q. Well, did the Sloss Company furnish the rock hammer, the pick or the shovel?

A. No, sir.

Q. Did you buy them?

A. Yes, sir.

Q. Did you buy them down underground in the mine or did you buy them from the Sloss supply house out on the surface or did you buy them from hardware stores?

A. Well, I bought them from both the commissary and the hardware stores.

Q. Is the commissary down underground or out on top?

A. Out on the top.

Q. How far is the commissary from the mouth of the mine?

A. About half a mile.

Q. When you bought picks and shovels and hammers here in town or at the commissary, how did you get those picks, hammers and shovels into the mine and to the place where your fist muckers would use them?

A. Well, I have carried them down, and in some cases they have been sent down, but from habit for the past three years I have carried most of mine down.

Q. Now, did you have any wear and tear on your shovel handles or your pick handles or your hammer handles?

A. Yes, sir.

Q. About how long would a shovel handle last without breaking?

A. Well, ordinarily a shovel handle will last about two months, and if—

Q. And if a shovel handle breaks does the Sloss Company furnish you with another shovel handle?

A. No, sir.

Q. What method is used and was used during those three years to get you another shovel handle?

A. Well, I buy another handle and put it in or either buy another shovel.

Q. Where did you put the handle in the shovel?

A. Well, on an average there is always some fellow standing around to meet you at the mine and ask you to let him do things like that,—couldn't do anything else much, and we would give him that kind of work to help him a little.

Q. You mean he would fix it outside the mine?

A. Yes, sir.

Q. And how did it get in to you at your drilling place?

A. We would carry them in.

Q. Would the same thing apply to your hammer handles and pick handles?

A. The same thing.

Q. Did the Sloss Company, underground, at the yard or anywhere else, have a place where they would furnish you with pick handles, hammer handles, or shovel handles?

A. Not to my knowing.

Q. Did you use in your work during those three years any other tools besides shovels, picks and hammers?

A. Well, we used drills.

Q. How about wrenches? Did you use any wrenches?

A. Stillson wrenches.

Q. Stillson wrenches?

A. Yes, sir.

Q. Did the Sloss Company furnish you the Stillson wrenches?

A. No, sir.

Q. You mean you or your men had to buy those yourselves?

A. I had to buy them.

Q. Well, how—did you buy those Stillson wrenches at the commissary, the hardware stores, or in the commissary?

A. Well, I bought some at each place.

Q. And how did you get the Stillson wrenches down in the mine?

A. Carried them down.

Q. Has that been true for the last three years?

A. Yes, sir.

Q. What did you use—in getting ore out of the earth, what is a Stillson wrench used for?

A. That Stillson wrench is used to connect your pipe. As you advance your place you will need about a joint of pipe a week. A Stillson wrench will catch anything round. A monkey wrench will slip, but a Stillson wrench would not. We would use that to connect anything round.

Q. In your drilling did you use air hose and water hose?

A. We did.

Q. When you needed to lengthen your air hose or wates hose, did the Sloss Company have a man to come around and lengthen them for you, or did you or some member of your crew do it yourself?

A. Well, both. Lots of times when we needed pipe they would tell us to go through—I may say 86 or 85,—whatever place was robbed, and get you some pipe and carry it over.

Q. Would that be on your way in they would tell you that?

A. Yes, sir.

Q. And then when you carried it on in your place, you joined it together with the other line?

A. I did.

Q. Now, what happened on other times? You say lots of times they did that. What happened on other times?

A. Lots of times we would need pipe and I would tell them and the pipe man would come. When he was there he would connect up the pipe for us.

Q. Now, what about your—what did you use for explosive to break the ore loose from the ore bed?

A. That is dynamite.

Q. How much of that did the Sloss Company furnish you each day?

A. Not any.

Q. You had to buy the explosives you used to crack the ore?

A. Yes, sir.

Q. How much explosives would you buy from the Sloss Company on an average shift?

A. A box.

Q. What did they charge you for a box?

A. $6.66

Mr. All:

We object.

The Court:

Overruled. Sixty cents a box?

The Witness:

$6.66 a box,—50-pound box.

Q. And when you bought that explosive from the Sloss Company, did you get it outside the mine or inside the mine?

A. Inside.

Q. Whereabouts inside the mine did you get it?

A. Well, for a long while the powder house was over about sixty-two or—three at Number 1. I wouldn't say just where—one or the other of those places. The magazine was in one of those old robbed places, but the last year or so it has been moved over, I believe, about 78 right, Number 2.

Q. Well, for the last year or two the powder magazine has been at 78 right. How far is that powder magazine from the place where you were actually drilling that ore or doing your work?

A. Oh, it is half a mile or possibly a little more.

Q. Now, when did you pick up this dynamite you were buying from the Sloss Company?

A. The drill helper picked it up on his way to work each morning.

Q. Picked it up on the way in?

A. That is right.

Q. Well, how did he carry a fifty pound box?

A. Well, he carried it in what we call a crocus sack, bagging sack, oat sack, anything like that.

Q. Is that the usual way all the men got their dynamite to their drilling places, by carrying it in a crocus sack?

Mr. All:

We object. He can't testify to other parties unless he knows.

The Court:

Unless he knows.

Q. Well, did you see other men with crocus sacks?

A. Yes, sir.

Q. Did the Sloss Company furnish you with those crocus sacks?

A. No, sir.

Q. Now, did the men pick up those crocus sacks at the powder magazine, or did they bring the crocus sacks into the mine with them?

A. They would bring them in with them.

Q. And if the crocus sacks wore out did the Sloss Company give you new ones, or did the men have to get their own crocus sacks again?

A. They would bring them in with them.

Q. Well, those crocus sacks,—how long did they last?

A. Well, that depends on whether they got wet or not. If you keep one dry it may last three weeks, something like that.

Q. If you get one wet?

A. They will tear out in a day or two. The burden of the powder will go to pressing those netted parts apart and the dynamite will go to falling out.

A. Yes, sir, and then you have to have a new one.

Q. Dynamite doesn't go off by itself; you have to have something to set it off?

A. Yes, sir, as far as I know.

Q. What did you use to set off your dynamite?

A. Well, blasting caps, Number 6.

Q. Well, how much blasting caps did the Sloss Company furnish you during those three years?

A. Not any.

Q. What did they charge you for the blasting caps?

Mr. All:
We object.

The Court:
Overruled.

A. A penny apiece.

Q. And how many blasting caps would you use in each hole you drilled, Jesse?

A. One.

Q. How many holes did you drill on an average each day?

A. Well, that depended on how much the fellow that went off the night shift,—how much he drilled. In an eighteen foot heading they have what they commonly call a block out. In other words, if you drill to much muck you have a blockout. We drilled to avoid a blockout. Sometimes we drilled six, sometimes twelve, and sometimes eleven.

Q. In other words, the night shift and day shift head miners drilled enough holes and shot enough holes so the fellow that followed him would have a day's operation,—a shift's operation?

A. That is right.

Q. And how did you get those miners' caps—those dynamite caps up to the drill place?

A. The helper brought them along with his powder.

Q. The helper brought them along with his powder?

A. Yes, sir.

Q. Well, did he carry those dynamite caps in a sack with the dynamite? How were they carried?

A. Well, in his pocket. He would generally put them in his shirt pocket.

Q. Now, how much fuse on an average, in your tour of duty, during those three years, did you use?

A. Well, it averaged one hundred feet a day. Sometimes I used more and sometimes less, but on an average I used one hundred feet a day.

Q. Did the Sloss Company furnish that to you?

A. Yes, sir, for sixty cents a hundred.

(Laughter in the Court room.)

The Court:

Order in Court. Maintain order; maintain order.

Q. You mean sixty cents a hundred feet?

A. Yes, sir.

Q. How did you get that fuse and where did you get it?

A. The drill helper also brought the fuse.

Q. Did he get that at the supply house where he got the dynamite up at 78?

A. Yes, sir.

Q. Did you use a tripod or column drill during those three years?

A. A tripod drill.

Q. The company furnished that, didn't it?

A. Yes, sir.

Q. Now, the drill steel that went into your drill, did the company furnish that?

A. Yes, sir.

Q. When it got dull, did the company sharpen it?

A. Yes, sir.

Q. Well, how did you get your drill steel for the big drill during those three years, Jesse?

A. Well, when I would go down in the morning on my way to work, I would go by the steel box, and if they had any steel there left over from the night shift, I would take it and carry it on with me.

Q. Well, when you were on your way to work, you mean; on your way to the drilling place?

A. To the drilling place, that is right.

Q. Now, when you left the drilling place to start out of the mine, if you had any dull steel, how did you get that back in the hands of the Sloss Company so they could sharpen it?

A. Now, before I left out they had a rule you had to bring your dull steel to the box and swap it in for sharp steel.

Q. You mean after you shot, on your way out you would take the dull steel along with you and leave it at the box?

A. No, sir, not after I shot. After the night shift—he would take the dull steel. I would look in the box to see if there was any sharp steel, and then the helper and myself would take the dull steel and bring it back and swap it out.

Q. You mean by a box—is that a box you had?

A. No, sir, the company's box,—a steel box they had there about eighty-seven, I believe it is,—a steel box where they keep sharp steel at.

Q. Did they keep sharp steel there?

A. Yes, sir, when they had it.

Q. What I don't understand is where you got your dull steel you were going to turn in for your sharp steel?

A. Now, the night shift works tonight.

Q. Yes.

A. I would get him his set.

Q. Yes.

A. He would use it tonight.

Q. Yes.

A. Now, the general rule, he will not send his steel out because I may not get any tomorrow.

Q. All right.

A. When we go in in the morning, we would take that dull steel to the box and exchange it for sharp steel.

Q. You have already been to your drilling place before you pick up the steel?

A. Usually, nine times out of ten.

Q. Now, as to your jackhammers—did you use them there in the Sloss mine?

A. Yes, sir, used them in the mine, but not at my particular place of work.

Q. You don't use the jackhammers?

A. No, sir, I don't have anything to do with them.

Q. All you used was the big drill?

A. The big drill.

Q. Jesse, you say you reported around six o'clock in the morning. Now, what time during those three years,

and you know what three years I mean, do you?—From October 24, 1938, to May 1, 1941?

A. Yes, sir.

Q. What was the regular time, if they had a regular time, for shooting?

A. 3:10.

Q. Who lit the fuses in your drilling place?

A. I did.

Q. What did you light them with, a match?

A. Carbide light, lamp.

Q. The same light you had been carrying around and furnishing the light to work with all during the shift, you used to light the fuses?

A. Yes, sir.

Q. All right. When you have lit your fuses at 3:10, during that period of time, where did you go and what did you do?

A. Well, I would go back to the man loading station and come out.

Q. All right. Now, as you went back to the man loading station—your distance, you say, was about a mile you walked, or half a mile, or what?

A. About a mile; possibly a little bit better than a mile.

Q. Now, going back to the man loading station after putting in this shift of drilling, were you walking mostly uphill or mostly downhill?

A. Mostly uphill.

Q. Well, when you and your crew got to the man loading station, what, ordinarily, was the physical appearence of you and your crew with reference to sweat when you got there?

Mr. All:

We object to that.

The Court:

I overrule the objection.

A. Pretty hot,—pretty hot and sweaty.

Q. And when you get there how do you get out of the mine after you get to the man loading station?

A. Well, around on the colored side we had what we called a bull pen. In other words, there were four or five or six—well, probably a dozen benches scattered out around there, and the bull pen comes from a big lot lining down to man's size,—one-man size,—principally, the most of the time, we would wait around there and our business was getting out the best way we could,—big pushing around there.

Q. Did the bull pen end at a gate or chute you went through before you could step on these man trip cars?

A. Ended at a gate.

Q. Ended at a gate?

A. Yes, sir.

Q. Well, was there any representative of the Sloss Company there when the men were getting ready to get on the man trip to tell them how many could get through the gate, or how many could ride?

A. Yes, sir.

Q. Who was the man that stayed there at the man chute leading from the bull pen to the man trip to tell them when they had enough and when they didn't have enough?

A. Usually one of the section foremen.

Q. What did he do? Did he merely talk to them or hold up his hand to give a signal to show no more men could come through the chute?

A. Well, both, he would hold up his hand and speak too.

Q. All right. After the man trip had loaded and the man trip had started out, you men in the bull pen would wait, would you, if you hadn't caught the first man trip, for the second man trip?

A. That is right.

Q. Well, did that section foreman ride that first trip out, or did he or some other representative of the Sloss Company stay there to supervise the men getting on the second man trip?

A. He stayed there.

Q. He stayed there?

A. Yes, sir.

Q. Well, how did they signal—How did they give a signal to the engineer to pull out the man trip?

A. The chainer always stood up there by the section foreman, and he would say, "Let's go, chainer."

Q. The section foreman would say, "Let's go, chainer"?

A. Yes, sir.

Q. When the section foreman said, "Let's go, chainer," what did the chainer do?

A. He would bell him up,—signal to him.

Q. Did he pull a rope or signal him with that ice pick you told about?

A. Signal with the pick.

Q. You have worked in the mines of other companies?

A. Yes, sir.

Q. You have heard of what they call a skip tender?

A. Yes, sir.

Q. Is that skip tender the same thing as what they call a chainer in the Sloss mines?

A. Same thing identically.

Q. Well, when you get on the top—when you get on the man trip and get to the top, was there anybody there to check you out?

A. No, sir. We didn't have to check out.

Q. Now, on your walk after you left the man unloading station going to the drilling place, did you walk in man ways alone, or did you walk part of the time in haulage ways?

A. Haulage ways.

Q. Well, now, when they are bringing—letting a string of empties down into the mine, does a man ride on those empties, or do they come unattended?

A. Well, that depends on the condition of the roof.

Q. Well, on your going down this hill into the valley that you mentioned, is there any part of the hill you walk on a track?

A. Yes, sir.

Q. What part of that distance would you say that you walk on a track?

A. Well, for the first twelve or fifteen hundred feet, we walked down a track, and then—

Q. All right. In walking down that track how is the footage along which you walk?

A. Well, in some places it is pretty fair and then in some it is pretty rough.

Q. What do you mean by rough? What makes it rough?

A. Well, over on the Number 1 side we constantly have roof falls, stuff falling from the roof, and cleaning it up, they clean up where the chain can go through, and consequently that leaves a rough place in there for a fellow to walk on.

Q. You mean by a roof fall, some slate in the roof falls down on the track?

A. Yes, sir.

Q. When it falls down on the track, how do they get it off?

A. That depends on the size of the fall. I have known them at times to blast that fall to get it small enough for men to handle. At times I have known them to break it with a hammer. By men breaking it or shooting it up so the men can get it out of the way.

Q. The axle—I mean the wheels of those tram cars run on steel rails?

A. Yes, sir.

Q. And about how high do those rails come above the cross ties they are fastened to?

A. Oh, about six inches.

Q. Then, how high above the steel rail is the axle of the tram car?

A. Oh, it is about four or five inches.

Q. Well, will the tram cars clear rock in the track?

A. Provided they are not too large.

Q. What size rock have you seen it clear as it rolled along the track?

A. Well, it wouldn't clear a rock over ten inches, I would say.

Q. You mean ten inches high?

A. That is right.

Q. When these rock falls occur from the roof and the men clear things up along this passage way, do they take out all the rock on the track or do they leave some in there?

A. Well, they take out some and leave some.

Q. And that is in the places you have to walk as you go along?

A. Yes, sir.

Q. And when you are walking along do you ever have these tram cars coming from behind,—going in the same direction you are going?

A. Yes, sir.

Q. Do they have any system of signals to give you warning that a trip of tram cars is coming?

A. No, sir.

Q. Well, if you are walking into your work how do you know when a tram car trip is coming?

A. Well, now, in walking down this slope, I believe you are talking about—

Q. That is right.

A. In walking down that slope you have to listen for the cars.

Q. All right. When you listen and hear the cars coming, what do you do to avoid being run over?

A. We make it for the nearest opening to get out of the track.

Q. How far away, in your judgment, can you hear them coming?

A. Oh, you can hear them for three or four hundred feet.

Q. Well, how do these cars—you said a while ago you go down hill into a valley, and then you start uphill. How do these cars get over this valley?

A. Well, now, they let the cars off down the hill with enough speed to go over the flat.

Q. Suppose it hadn't enough speed and didn't go over the flat; what happened?

A. Then the car would stop.

Q. Then what would happen?

A. The engine would hoist them back and give them another running start and they would go through.

Q. Now, in this Sloss mine that you are talking about, do they run electric locomotives all over the mine to haul the tram cars out to the tipple or the unloading station?

A. Not all aver the mine, no, sir.

Q. Well, what do they use to move these loaded ore cars out when the places are too steep for electric locomotives?

A. Hoisting engine.

Q. How many different hoisting engines have they down in the Sloss mine that they use to pull ore cars?

A. Two to my knowledge.

Q. All right. Where are those hoisting engines located?

A. Now, do you mean—you mean the different kinds of engine? That is what you mean?

Q. Yes.

A. What I meant by two, we had an air hoist and an electric hoist.

Q. All right, tell us. Do you have a hoist air engine pulling the trams and pulling the cable which pulls the cars up?

A. That is right.

Q. How many places down in the mine are so steep they have these hoisting engines to pull the cars up?

A. There is 55 hoist, number 1 hoist at the main slope, 87 or 8 right hoist, number 1, and 86 right, number 1, and there may be some more. I couldn't remember just now.

Q. Jesse, do you get a ride to any of these places after you leave the man unloading station?

A. No, sir.

Q. Do you know of any place in the Sloss mine where they haul the men again after they get off at the man unloading station going in?

A. You go down to the first unloading station and then walk up an incline about five hundred feet to 55 hoist and then is where there was that second trip to lower you down to 74.

Q. When was that second trip put on to lower you down to 74?

A. Well, it was sometime shortly after September 16th last year.

Q. How long a ride do you get on that?

A. Oh, I will say about 1500 feet.

Q. All these hoists have cables that are fastened to the cars?

A. Yes, sir.

Q. Now, if—when you have stepped aside to let a trip of cars go on by, do the men get out and start walking while the cable is going on out, or do you have to wait until it is all out and the cable is quiet, not moving?

A. Well, you see when you go down to 74 the same fellow that is up above on the same cars, he waits until the trip passes by him before going out, but the fellow on the bottom car, he usually gets off and goes ahead.

Q. I understood you to say a while ago that there was no system of checking the men out of the mine out at the Sloss Company.

Well, during these three years have you known of instances where men were left in the mine and didn't get

out at the—when they had finished their drilling or blasting?

A. Yes, sir.

Q. And what happened in those cases?

A. Well, whenever a fellow missed the last drag in the evening he waited until the night shift come down and then he would come out on the trip they went down on.

Q. Now, then, while you men are there in the bull pen during these three years, have you at any time had to wait while the chainer kept hauling ore out of the mine before he started hauling the men?

A. In the evening?

Q. Yes.

A. Yes, sir.

Q. How long have you had to wait during those three years while they kept hauling ore trips out instead of hauling the men out?

A. Well, that time kind of varied a little. Sometimes it varied around five or ten minutes. In other words, the chainer at quitting time—sometimes the foreman would tell him to pull another trip; sometimes he would tell him to pull two more.

Mr. Harris:

If the Court please, if Your Honor is going to take the customary recess—

The Court:

We will.

Mr. Harris:

I will take up another phase when we come back.

The Court:

We will recess for a few minutes.

(Thereupon proceedings were in recess from 10:35 A. M., to 10:45 A. M., at which time proceedings were resumed as follows:)

(By Mr. Harris):

Q. Jesse, during this three-year period was the Sloss Company running for the most part on a five-day week?

A. Yes, sir.

Q. Now, in going into the mine at the Sloss are there any electric wires or cables overhead at any of the places where you and your crew walk in going to and from the drilling place to the man-loading station?

A. Yes, sir.

Q. How many different places, if any, would you say there were where a man would have to stoop to avoid coming into contact with those wires, if there are any at all?

A. Well, going from—up in my place there were about two places where we would have to stoop.

Q. Now, are those wires exposed at any point along the part you walked under?

A. Yes, sir.

Q. In going into this mine does the air stay the same temperature from the time you get off at the man unloading station until you get to your drilling place, or do you notice any change one way or the other?

A. Yes, sir, there is a change in it.

Q. As to temperature, what change do you notice and where does it take place?

A. Well, it gets hotter as you go further—deeper into the mine. The circulation is not as good there as it is out on the main haulage.

Q. Jesse, in the Sloss mines where these four hundred men are working during the years inquired about have there been any water closets or underground privies or anything of that kind there?

Mr. All:
We object.

A. No, sir.

Q. At what point, if any, as you go into the mine, do you first detect the odor arising from human dung or excreta in the mine?

A. Well, we got off at 48 and walked—go down one side approximately 500 feet and turn down the incline, and from there you smell the odors, and from there on until your working place, with the exception on back about 300 feet from our working place.

Q. Well, now, how great a distance is it you detect that odor?

A. I would say, starting at the top of the incline, the first old, robbed out place, to where it ends, it would come closer to being three quarters of a mile than anything else.

Q. Three quarters of a mile?

A. Yes, sir.

Q. You told us when you reported, at six o'clock, but I don't think you have told us what time during those three years you got back on top.

A. Well, anywhere from 3:45 to 4:05.

Q. During those three years how were you paid for your work at the Sloss mine?

A. On the tonnage system with the exception for the last contract,—I mean last September,—up until last September.

Q. All right. From October, '38, until September last year, what measure was used to determine how much money you, Jesse Gaines, got?

A. Well, there were two things involved.

Q. What were they?

A. First, in the 18-foot places they pay yardage, $9.90 a yard, and your tonnage.

Q. I didn't hear you. Talk louder.

A. Yardage and tonnage.

Q. Yes.

A. In these development places it takes so much powder to shoot they give you a little yardage to help pay that powder bill.

Q. A development place, is that wider or narrower than the ordinary stopes where you work?

A. Narrower; 18 feet back to 12.

Q. Can a miner produce as much ore in a narrow place as he can in a wider place?

A. No, sir.

Q. What is the difference between a narrow place and ordinary work in a stope; what is the percentage increase;

A. Ordinarily, in a vein of ore nine feet thick and about eighteen feet wide, you drill out, and you break about thirty-five or forty tons. Sometimes you would break a little more and sometimes not so much, but on an average thirty-five or forty tons.

Q. In a wider place, how much can you break out?

A. Well, on a mechanical loader, a man can take the same amount of hoes and break out about a hundred tons.

Q. From October 24, 1938, up until September 1, 1940, you were on a tonnage basis?

A. Yes, sir.

Q. What did you, as a head miner, get for the ore that came out of your place?

A. 15.3.

Q. What?

Mr. All:

May it please the Court, I want to call your attention to this: There isn't any reason for oral testimony where it is conflicting with the written testimony; and I want to object to that. If there is any written contracts—.

The Court:

I can't hear you.

Mr. All:

I say if there is anything in writing which shows what he gets per ton, I would object to his oral testimony.

There is no use having him speak from recollection when he doesn't absolutey know, and I think that ought to be avoided.

Mr. Harris:

I am not interested in—

The Court:

He can testify to what he gets.

Mr. Harris:

Yes, sir, he can testify to what he gets.

Mr. All:

I think—

The Court:

That is what he is asking about.

Mr. All:

I think he is asking what the contract provides for.

The Court:

I think he ought to be limited to what he gets, what he is paid.

Mr. Harris:

That is what I am trying to bring out, Your Honor.

Mr. All:

We except.

Q. My question is from October 24, 1938, up to September 1, 1940, what did you get paid a ton for the ore that you got out with your crew?

A. 15.3,—15 and three-tenths.

Q. You mean 15 cents and 3/10 of a cent a ton?

A. Fifteen cents and 3/10 of a cent a ton.

Q. All right. Now, you had fist muckers?

A. That is right.

Q. Let's take this illustration: Suppose on Monday 20 tons of ore were hauled away from the place where your shift—your crew was working.

On that 20 tons that were hauled, you would get 15 3 cents a ton?

A. That is right.

Q. How were you—did you have a drill helper?

A. Yes, sir.

Q. How as he paid, on a tonnage basis?

A. 13.9.

Q. Did you have fist muckers?

A. Yes, sir.

Q. All right. How were they paid?

A. The same way.

Q. 13.9?

A. 13.9.

Q. Now, Jesse, during that period of time up to September, 1940, suppose you shot down thirty tons but your crew only loaded twenty tons.

What did you get pay for?

A. Twenty tons.

Q. Then, the next crew, the night shift that followed you, if they loaded it, they would get pay for it?

A. That is right.

Q. Now, Jesse, suppose you went in the mine, up to September, 1940, and you and your crew produced one tram load of ore during the entire shift.

How much did you get paid for?

A. One ton.

Q. One tram load?

A. That is right; one ton.

Q. Is a tram load one ton or two tons?

A. Approximately two tons. Get paid for two tons,—whatever that car had on it.

Q. Well, during that period from October '38; to September, 1940, were there ever any occasions when you and your crew would produce as little as ten tons of ore?

A. Yes, sir.

Q. Then you got paid for how much?

A. What we produced.

Q. Jesse, did anybody for the Sloss Company during the period from October 24, 1938, up until May 1, 1941, ever come around to your crew and take your time that you were in there?

A. Not at my place, they didn't.

Q. Did anybody ever wait outside, so far as you know, and take your time whenever you got out of the mine from October 24, 1938, up to May 1, 1941?

A. Not to my knowledge.

Q. Has anybody ever told you you were being paid on a time basis, anybody representing the Sloss Company?

A. No, sir.

Q. From October 24, 1938, to September 1, 1940, as I understand it, you were paid on absolutely a tonnage basis?

A. That is right.

Q. You and your crew?

A. Yes, sir, that is right.

Q. Now, what difference, Jesse, did they make in the way they paid you after September, 1940, up until May 1st, 1941?

A. Well, in our contract which took effect the 16th of September, we had in fist mucking places a 90 percent guarantee. In other words, we base on thirty-five tons, a five man crew in an eighteen foot place. Ninety percent of what thirty-five tons would figure at 15.3,—I would get 90 percent of that as a guarantee.

Q. And were you ever paid on that guaranteed basis after September 1, 1940, and before May 1, 1941?

A. I don't think I was. I run that much tonnage, and they didn't have to pay me.

Q. Now, after—

Mr. All:

Wait a minute. What is that answer?

(Thereupon the last given answer, as above recorded, was read by the reporter.)

The Witness:

I run enough tonnage to cover the guarantee and they didn't have to pay me. You run it yourself and they don't have to pay you.

Mr. All:

You always earned it?

The Witness:

From our contract date—you said when?

The Court:

September to May 1st, you said.

The Witness:

From September to May 1st, principally.

Q. You shot enough your ore and your crew hauled out enough ore where you got more than your minimum guarantee?

A. I made my guarantee.

Q. You made your guarantee?

A. Yes, sir.

Q. All right. On May 1, 1941, did the Sloss Company put in any clock system at the top of the mine where you punched a clock?

A. Yes, sir.

Q. Do you punch a clock as you go out?

A. Yes, sir.

Q. Has there ever been a clock there from October 24, 1938, up to May 1, 1941, so far as you know of or recall?

A. No, sir.

Q. Jesse, when the Union was organized in this district did you join it?

A. Yes, sir.

Q. What year was it that you joined the union, Jesse?

A. It was somewhere in the spring or summer,—I would not be exact about the month,—of 1933.

Q. Have you been a member of the union all the time since that time?

A. Yes, sir.

Q. What union do you belong to?

A. Sloss Local 109.

Q. Are you an officer of that union?

A. Yes, sir.

The Court:

What union is that?

Mr. Harris:

Sloss Local 109.

Mr. Lipscomb:

International Union of Mine, Mill & Smelter Workers.

Mr. Harris:

Oh, I didn't understand your honor.

Q. Was that union affiliated with the A. F. of L. or C. I. O.?

A. Formerly it was affiliated with the A. F. of L., but when the split happened in organized labor, it went in the C. I. O.

Q. All right. Were you a member of any of the committees of your union representing your union in negotiations with the officers of the Sloss Company?

A. Yes, sir, commencing in 1933, I was.

Q. Were you on a scale committee or grievance committee or general committee?

A. Both.

Q. Both?

A. Yes, sir.

Q. On the general committee, with what representatives of the Sloss Company did the committee meet and confer?

A. We met with the Vice President and General Manager, and on up to Mr. Hugh Morrow.

Q. Back in 1934 were you a member of the general committee then?

A. Yes, sir.

Q. And as a member of that general committee in 1934, did you have any meetings that year with the officers of the Sloss Company?

A. Yes, sir.

Q. In those meetings, Jesse, did the Union have a stenographer to take down what was said by the Union and what was said by the officers of the Sloss Company?

A. No, sir.

Q. Did the Sloss Company have a stenographer to take down what was said at those meetings?

A. Well, some they did and some they didn't.

Q. Did you have any discussion with the officers of the Sloss Company as to keeping minutes of those meetings?

A. Yes, sir, once or twice we have.

Q. Well, what was said by the representatives of the Sloss Company when you discussed keeping minutes?

Mr. All:

We object to that.

The Court:

Overruled.

A. Well, they stated they were opposed to us bringing in a stenographer on the ground what went on in the meeting might fall into the wrong hands, people that didn't work for the best interest of the union neither of the Sloss Company.

Q. What representative of the company told you that?

A. I think Mr. Ben Davis was the one that told us that.

Q. Did you ever discuss with the representatives of the Sloss Company the question of a six hour day?

A. Yes, sir.

Q. And who was the person or persons representing the Sloss Company when you took up a six hour day with them?

A. Mr. Marshall.

Q. Was anybody else there for the company?

A. Mr. Marshall, Mr. Davis and—I believe they were the two we talked to.

Q. Well, do you remember—was that in 1934?

A. In 1934.

Q. Do you remember who was there as representatives of the union?

A. The president, Mr. Hill, Mr. W. A. O'Neal, Mr. Gilbert and I believe Martin Walker, colored, and James Knox, and myself.

Q. Well, when you asked Mr. Marshall—what was he at that time?

A. Vice President and general manager.

Q. Of the Sloss Company?

A. Yes, sir.

Q. When you asked him—

Mr. All:

Do you mind asking him whether that was in writing or whether it was oral?

Mr. Harris:
No, I don't mind.

Q. When you were having these discussions with Mr. Marshall, the thing I am asking you about, was that in writing or was that just talk back and forth?

A. Well, it was a combination.

Q. A combination?

A. Some in writing and some general conversation that followed.

Q. Did you have a conversation with him about the six hour day?

A. We did.

Q. All right. Did you ask him for a six hour day?

A. We did.

Q. Just tell the Court, as well as you can recall, exactly what Mr. Marshall said when you all asked him for the six hour day?

A. He had a pretty long story to tell. Do you want the whole story?

Q. Tell us what he said. We want to find out what happened.

Mr. All:
We object; illegal, irrelevant, incompetent and immaterial.

The Court:
Overruled.

A. He said—first, he went all over Red Mountain and outlined the past so far as the rule of the mountain was concerned.

He left there and went up—I believe he said the Eastern seashore where they sell most of their pig iron—

The Court:
Where they do what?

The Witness:
Sell most of their pig iron, on the eastern seashore.

The Court:
Oh. All right.

The Witness:
And he discussed the unfair freight rate, and I think he discussed the Pittsburgh plus, and then I think he went up in the Lake Shore Region and discussed the mining up there. Then he went all over the United States, every mining company, I reckon, on record, and he went over in Spain and talked about mining around Joppa, over in there—

Mr. Burr:
Around what?

The Witness:
Joppa,—J-o-p-p-a.
He told us lots of beautiful stories. Finally, he said, Mr. Davis and I are from a field where the wages are much higher here, and that is what we don't like, the low wage scale, but the Sloss Company has sent us in here not to set the pace, but to work with the competitors in this field, and we feel we are too small a company to try to set the pace.

The Court:
Try to do what?

The Witness:
To try to set the pace.

And then he told us even the powerful United Mine Workers that had already won recognition, they didn't have a six hour day. Consequently, he thought our request was foolish.

Q. In that conversation, was anything mentioned about being paid for going in and coming out of the mine?
A. There was.
Q. Did you all ask for that?
A. We did.
Q. What did he say?

Mr. All:
Let's find out, if the Court please, whether or not that was in writing.

The Court:
I understood he was asking about a conversation. He is asking about a conversation.

Mr. All:
I want to know whether the conversation was based on a written proposal.

Mr. Harris:
I don't care what it was based on. I want to know what was said.

Mr. All:
I want to ask him that question.

The Court:
I am permitting the discussion to go in.

Mr. Harris:
I object to him interrupting my examination of the witness.

Q. When you asked Mr. Marshall for going in and coming out,—pay for going in and coming out, what did he say?

A. He said it was on a national scale and the Sloss Company didn't propose to step out and set the pace.

Q. I failed to ask a while ago before October 24, 1938, was there ever any time during all these years you were working for the Sloss Company that you were ever paid on anything except a tonnage basis up to October 24, 1938?

A. Yes, sir, for a while when I trammed for the company.

Q. When was that? What year was that?

A. I believe that was about '31 and some portion of '32.

Q. What do you mean by trammed for the company?

A. Well, the mechanical loader at present is on a tonnage basis just like the other part of the time. At that time the company operated the mechanical loaders. They furnished everything and naturally whatever you produced was the company's. The man that trammed on the loader was paid so much a day.

Q. How were you paid back there when you worked on those mechanical loaders?

A. I was paid by the day.

Q. What time of day did you report then?

A. At 6:30.

Q. Where did you report at 6:30?

A. At the tally house on top.

Q. And what time of day did you get out on top?

A. Well, back in there there wasn't so much concern about that. It was the amount of ore. We had to tram so many tons of ore. We had to tram twelve. If we trammed twelve and didn't have no throw-offs and got through in time to catch the 4:30 drag, we caught it.

Q. Well, was 4:30 the drag you caught?

A. 4:30 was drag time.

Q. Now, Jesse, when Mr. Marshall told you they were not there to set the pace and turned down the request for a six hour day and pay going in and out, did you representatives of the union ask for anything different from that?

A. Yes, sir; we asked for a seven-hour day and pay one way.

Q. Did you have any discussion with him about that?

A. Yes, sir.

Q. And what did you say when you asked him for a seven-hour day and pay for one way?

A. That was impractical.

Q. He told you that was impractical?

A. Yes, sir.

Q. And then what was the next thing after that; after you asked for a seven-hour day and pay one way, what was the next thing you all talked over with them?

A. An eight hour day.

Q. And when do you recall you had your conversations with him about the eight hour day; what year was that?

A. Well, that conversation started the first year and continued every year on down until now.

Q. Well, during this time, during these years, did you have any discussion about your wages, your rates of pay?

A. Yes, sir.

Q. The first time you all met what did you ask for and what did he say about your rates of pay?

A. You mean in 1934?

Q. Yes, in 1934.

A. Well, as I said, he said he didn't feel like the Sloss Company, being as small as it was, would be required—we were asking too much to ask them to set the pace in establishing a wage scale; they were going to follow suits with the other companies.

Q. Follow what?

A. They were going to follow suits with the other companies; whatever the other companies did they were going to do.

Q. Did he ever tell you after that they had changed their policy and were not going to follow suit with the other companies?

Mr. All:

We object on the ground it is leading and calls for a conclusion, and illegal, irrelevant, immaterial and incompetent.

The Court:

Overrule the objection.

Q. Did you understand the question?

A. Yes, sir. To my knowledge he did not tell us that.

Mr. All:

You say he did not?

The Witness:

Not to my knowledge, he didn't.

Mr. All:

Yes.

The Court:

Jesse, what did your wages amount to when you were working on the tonnage basis at 15.3 per ton?

The Witness:

A day?

The Court:

A day? What did your average wages run?

The Witness:

It figured around $4.60,—$5.00 sometimes. It varied according to the show we had. If a fellow had a good show and we loaded over thirty-five tons it increased fifteen—

The Court:
What did a driller receive, get?

The Witness:
It ran around four thirty-five,—four eighty. In other words, my wages ran 82 cents ahead of his.

The Court:
What did a fist mucker receiver?

The Witness:
The same thing.

The Court:
The same thing?

The Witness:
Yes, sir.

The Court:
These things you had to buy, the tools, picks and hammers a shovels and powder and caps and fuse, was that charged to you individually or you and the other men?

The Witness:
Me individually.

The Court:
You had to buy that out of these earnings?

The Witness:
Yes, sir.

The Court:
In other words, you had to pay for these things?

The Witness:

Yes, sir; everything that went into the heading showed on my statement.

Q. Who was your general superintendent out at the Sloss Company in the last two years?

A. Mr. Davis.

Q. Now, did you ever have a conference with a man by the name of Costner?

A. Yes, sir.

Q. What office did he have with the Sloss-Sheffield Steel & Iron Company?

A. I believe he was general superintendent—

Q. What is that?

A. I believe he was general superintendent over both ore and coal mines.

Q. Is that Mr. Costner there sitting back of Mr. All?

A. Yes, sir.

Q. How long have you known him, Jesse?

A. Ever since he was put over the ore mines division. I don't know just how many years that was. I haven't kept accurate account, but since he has been over the ore mines division out there I have been knowing him.

Q. Have you had conversations with Mr. Costner about collar to collar plans?

A. Yes, sir.

Q. Well, when did you first talk collar to collar with Mr. Costner?

A. Well, we mentioned collar to collar—I think that originated in the last twenty-four months. I think that is the first time I heard collar to collar originate, which is just using traveling time, but in the last twenty-four months I have mentioned it to him quite frequently.

Q. All right. What did he say about collar to collar?

A. Well, in our last—just a day or two before we started negotiations for our last contract, we had a grievance that was turned in to us by the pump men over at

Number 1. Those pump men have to walk in and out, and they felt like if they had to walk in and out they should have some little extra compensation for it, and we mentioned to him about giving that particular crew traveling time, and in a long discussion that followed he said for that particular crew, starting Monday morning, they could go on this collar to collar day.

Q. All right. Then, on Monday morning—thereafter—between that time and Monday did you have another conversation with Mr. Costner?

A. Well, I think that following Friday before that Monday we got word in the mine he wanted to see us when we got out of the mine.

Q. Did you go to see him?

A. Yes, sir.

Q. What did he say?

A. He said, "I will have to take my contract today back on the pump men."

Q. Was that all he said?

A. We asked him why. That was the next question. He said, well, the legal adviser told him he couldn't do it.

Q. What year and what month was that, Jesse?—

A. That was—right off hand—In September of last year.

Q. September of 1940?

A. Yes, sir.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr. All):

Q. Jesse, you say you have been working for the Sloss Company for how many years?

Mr. Harris:

There is one question I neglected asking him, Ernest, if you don't mind before you start.

Mr. All:
Yes, sir.

Mr. Harris:
In reference to some of the questions the judge asked you about taking it out of your wages, wasn't there an allowance for powder cost? Did not you get some sort of allowance from the company for powder besides the tonnage base?

The Witness:
Well, we had an allowance of about ten or eleven cents a ton, but in narrow work our powder always overran that allowance of 11 cents a ton. You can't shoot in narrow places for 11 cents a ton.

Mr. Harris:
That is all.

The Court:
Take the witness.

Q. You say you have been working for the Sloss Company how long?
A. Approximately 14 years.
Q. You said you worked at Mine Number 1, for a while?
A. That is right.
Q. When did you stop working at Mine Number 1?
A. I haven't stopped working in Number 1.
Q. I thought you said you were working in Number 2.
A. Go down through Number 2 and back into Number 1.
Q. So you are working in the same mine you have always worked in?
A. Not always.
Q. What slope is this mine worked from? What slope is it worked from?

A. We go down in Number 2 and then back over in Number 1.

Q. How long have you been head miner?

A. Since 1935.

Q. So, from 1935 right up to the present time, you have been a head miner?

A. Yes, sir.

Q. Were the conditions as you have described them in answer to Mr. Harris' questions between October 1938 and May, 1941,—did those same practices exist prior to 1938,—from 1935 to 1938?

A. Yes, sir.

Q. So what you have said dates back—dates back behind 1938?

A. Well, I wasn't asked questions behind 1938.

Q. I know you haven't been asked, but I am asking you now.

A. The questions I answered referred back to 1938.

Q. But I am asking you to refer it back to 1935. It was the same?

A. Yes, sir.

The Court:

Will you answer the question?

Mr. Harris:

He answered way back there and said it went back to 1935.

The Court:

Go ahead.

Q. I want to get it clear.

A. Yes, sir.

The Court:

Yes, sir; go ahead.

Q. I am asking you from 1935 to 1938, were the practices the same as they were from 1938 to 1941?

A. Practically the same.

Q. Practically the same?

A. Yes, sir.

Q. All right. You stated that the first thing you did,—I am going back to 1935; all the way from 1935 to 1941,—that you went to the bath house first; is that right?

A. That is right.

Q. And then you changed clothes?

A. Yes, sir.

Q. And then you went from there to what point?

A. Went to Number 2 slope.

Q. To Number 2 slope?

A. To Number 2 slope.

Q. All right. What did you say you did there the first thing?

A. Well, we go up to the tally house and tell the mine foreman or the section foreman, I am here.

Q. Was that before you got the carbide—

A. Sometimes—

Q. Or after you had gotten the carbide?

A. After I had bought my carbide.

Q. Well, it was after you got it?

A. Yes, sir.

Q. Did you have your carbide with you when you did that?

A. Yes, sir.

Q. All the time?

A. Yes, sir.

Q. You went over there, and what you did, when you walked up to him, you said, "Here am I;" that is all, isn't it?

A. Naturally I didn't have no conversation to hold with him unless there was something I wanted to order or something I wanted to ask him about.

Q. It was very seldom you had anything you wanted to order or wanted to ask him about? That didn't occur every day, did it?

A. Not at the tally house.

Q. I mean when you walked up and said, "Here am I"—you didn't do that every day, did you?

A. I said, "Here am I", every day.

Q. All right. Now, you did that for yourself?

A. Yes, sir.

Q. Did each member of your crew walk up to him and say, "Here am I," just like you did?

A. Sometimes they did and sometimes they would tell me, "Check me in over there. Tell him I am here."

Q. Well, as a rule would they go up and tell him, "Here am I", every man?

A. Principally they did.

Q. What do you mean by principally they did?

A. Part of the time.

Q. Part of the time?

A. That is right.

Q. Well, when you said, "Here am I," that was about the end of it unless you had something, wanted to get some requisition or had something to ask about the place; isn't that right?

A. What I said to him?

Q. What?

A. I say the conversation that went on between the foreman and myself, that was about the end, unless he asked me something else or something I particularly wanted to ask him about.

Q. Well, you didn't ask him about things every morning? Principally you said, "Here am I", and that ended it? You knew where your working place was?

A. That didn't e[illegible] all I done.

Q. What?

A. That didn't end all my duties on the top.

Q. I didn't ask you about that. I said it ended your conversation with the foreman?

A. I say it ended it unless I wanted to order something or he wanted to say something to me.

Q. That didn't happen often?

A. As often as was necessary.

Q. How often was it necessary?

A. That depended on what I needed.

Q. Needed what?

A. A man working needs tools to work with, needs pipe, water hose,—

Q. You talked some to him if you needed anything?

A. That is right.

Q. If you didn't need anything you didn't talk to him then?

A. Not to a great degree.

Q. Now, what were the things you needed in your heading?

A. Drill, air hose, water hose, shovels, picks, hammers.

Q. How long would a pick handle last?

A. Ordinarily a pick handle would last a couple of months.

Q. How long would a pick last?

A. They are about the same. Under the same conditions, the same amount of work, they will last about the same time.

Q. You mean the handle will last as long as the pick?

A. No, I don't mean that.

Q. That is what I am asking you. You didn't buy a whole pick because the handle wore out?

A. That depends on what you use the pick for.

Q. What did you use it for?

A. To pick ore with.

Q. Did you buy a whole pick when the handle wore out?

A. No, sir. When we needed a handle we bought a handle.

Q. How many handles would a pick wear out?

A. One at a time.

Q. You know what I am talking about, don't you? How many handles—if you don't understand that, let me ask it this way: You go and buy a pick today, and every time the handle wears out you buy another handle and put it in the pick?

A. That is right.

Q. How many handles would you have to buy before that pick wore out?

A. I wouldn't try to answer that. I never have wore one out down to the eye. Some fellows steals them. Mine have gone on somewhere else.

Q. I am not talking about wearing it down to the eye. I am talking about like you use it.

A. What is your question?

Q. I am not talking about wearing it down to the eye. I am talking about where it is no longer useful for the purpose of you using it, or you think it is no longer useful?

A. Well, it would last twelve months.

Q. It would last twelve months, and you say sometimes somebody would steal one?

A. In cases.

Q. You mean somebody on the shift opposite you?

A. Yes, sir.

Q. In that case you would have to get another pick?

A. That is right.

Q. Now, let me ask you about your shovels, the same question about your shovels?

A. How long a shovel would last?

Q. Yes.

A. Ordinarily used, a shovel would last above sixty days.

Q. You mean the shovel or the handle?

The Court:

You asked him about the shovel and he answered it, Mr. All:

Mr. All:

Well, I want to be sure—

The Court:

He has answered your question. I don't mean to be dictatorial at all.

Mr. All:

Judge, I understand you don't, but the only thing is this—

The Court:

You asked him a simple question and he answered it.

Mr. All:

I appreciate your situation. I know you are not being dictatorial.

The Court:

The question has been answered. Go ahead.

Q. All right. Now, what about the drills? How often would you have any occasion to talk to the foreman at the top about the drills?

A. Well, very often we have that to do, because—

Q. How often?

A. Do you want to know the reason why?

Q. You answer the question. You are suiting me all right. I asked you how often—

The Court:

You answer his question. You pay attention to what he asks and answer his questions. Don't make any side remarks either. Just answer his questions.

Let's go ahead.

Mr. All:
Read the question to him, please.

The Court:
Read him the question.

(Thereupon the reporter read the question last propounded as above recorded.)

A. That depended on what happened to the drill on the shift previous to mine.

Q. I am asking you, Jesse, about how often would anything like that come out on an average?

A. Two or three times a week, maybe.

Q. Two or three times a week?

A. More or less.

Q. Then you might happen to say something to him about an air hose or water hose or someting of that sort?

A. Yes, sir.

Mr. Harris:
Talk louder, Jesse. I don't hear you sometimes.

The Court:
Talk louder so we can all hear you.

Q. All right. Now, what was your working place in 1935 when you first became head miner over there?

A. The bottom of Number 1 slope.

Q. All right. How long did you continue—did that continue to be your working place?

A. I believe until the latter part of 1936 or the first part of 1937.

Q. So that you went there practically every day?

A. Except when the place was falling or working.

Q. Well, that was very seldom?

A. Well, it wasn't so often.

Q. Yes. All right. Now, you went from that place to what place next in 1936?

A. I believe it was 88. Right.

Q. Now, from the time you went there how long did that continue to be your working place?

A. Oh, for a little better than a year.

Q. For a little better than a year?

A. Yes, sir.

Q. You had made no changes in working places during that period of time?

A. Not regular.

Q. Any changes you made were very seldom?

A. Yes, sir.

Q. Was that right?

A. Yes, sir.

The Court:

I can't hear you.

The Witness:

That is right.

The Court:

Talk out.

Q. All right. After you left there, what became your working place?

A. They taken me off in a place they called 90 left cross.

Q. When was that?

A. I believe that was in September—it was either August or September of 1938.

Q. All right. Now, how long did that continue to be your working place?

A. A little better than a year.

Q. You didn't change working places within that year, did you?

A. Not regular.

Q. Well, I mean—you didn't change working places once a month, did you?

A. Well, I didn't keep an accurate count of changes, of just how often, but as I say, if I went down and found anything wrong with that place—

Q. Well, during that period if that was not your working place from day to day it was due to some unusual occurrence?

A. That is right.

Q. Now, what was your next working place after that?

A. No, the number of that next working place, I have never known what it was, but it was just a break through to straighten out a room.

Q. When did you go there?

A. I went there on the first day of December of last year.

Q. You mean 1940?

A. That is right.

Q. So, you have mentioned behind that all the places you have worked in from '35 up until now?

A. Yes, sir.

Q. You are still working there?

A. No, sir. I broke that place through, and they sent me further up to break another places through from Number 1 to Number 2, an air course—haulage way.

Q. Jesse, you never have been paid since you were over there for travel time, have you, collar to collar, portal to portal?

A. Well, you mean up to the present time?

Q. Up to the present time,—up to May 1, 1941.

A. Up to May 1st?

Q. Up to May 1, 1941.

A. No, sir, have not.

Q. They never have had a rate set for traveling time, have they?

A. Not to my knowing.

Q. Don't you know they haven't?

A. Not to my knowing.

Q. All right. Now what, time from 1935, on up to 1941, —what time were you due to get into your heading or your stope where you were drilling and working up before May 1, 1941?

A. Seven o'clock.

Q. Seven o'clock?

A. Yes, sir.

Q. And your work time ended at 3:15, didn't it?

A. 3:10.

Q. 3:10? You mean it ended for the muckers at 3:10?

A. Yes, sir, at the working place.

Q. At their working place?

A. Yes, sir.

Q. They left at 3:10?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. So they started at 7:00 at their working place and ended at 3:10?

A. Yes, sir.

Q. All right. What time did you drill over that period from 1931--from 1935 to May 1, 1941?

A. That was my regular occupation, drilling.

Q. What is that?

A. Drilling was my regular occupation.

Q. What time did you start drilling?

A. Well, by the time you get up and quarry and make things safe, it would be around 15 minutes to eight. That depends on the nature of the place when you went in. Sometimes you would have a lot of quarrying to do and sometimes not so much.

Q. You say 15 of what time?

A. Eight.

Q. Fifteen minutes of eight?

A. Yes, sir.

Q. You had a rule over there you had to make the place safe for the muckers to work?

A. Yes, sir.

Q. You followed that rule?

A. Yes, sir.

Q. In other words, you and the drill man were supposed to test the roof with a bar?

A. I was the drill man. The head miner in an eighteen foot place is the drill man.

Q. Well, you tested the roof?

A. Yes, sir.

Q. For yourself and the muckers and everybody else?

A. Yes, sir.

Q. To see if it was safe to go to work?

A. Yes, sir.

Q. What time did you shoot?

A. At 3:10.

Q. 3:10? Before you lit your fuses the other men in the heading had to get out

A. Yes, sir.

Q. I mean they had to get out for safety reasons?

A. Well, they didn't get out ahead of me. Lots of times they would stand there until I lit the holes and we would all go out together. As long as they were in front of me I was satisfied because there was nobody behind.

Q. You say you would go out together?

A. Most of the time we would. I would light and me and my crew would go out together.

Q. Did you go in together?

A. Sometimes we would and sometimes there would be a little variation.

Q. There wasn't any rule you would all catch the same trip going down?

A. No, sir, we didn't have to catch the same trip.

Q. And as a rule—very often the different men in different crews caught different trips?

A. I would rather speak about my own men.

Q. You don't know about the other men. Is that what you mean? Is that the reason you say you would rather not speak about the other crews?

A. You asked me directly about my own crew.

Q. You said you preferred not to speak about the other crews. You said you would rather not speak about them. Is it because you don't know? Is that the reason?

A. I would rather speak about what pertains to my crew.

Q. You don't know about the others?

A. I saw them all right.

Q. I am not asking you about that. Didn't members of the same crew constantly go down on different man trips in the morning?

A. Mr. All, I just can't remember it.

Q. What?

A. I can't remember it.

Q. You can't remember it?

A. No, sir.

Q. How many could go down in one car?

A. Sixty,—ten on one car.

Q. Well, did they have a special car for your crew?

A. Not necessarily.

Q. How many men in your crew?

A. Five.

Q. How many men in most of the hand loading crews?

A. Five.

Q. Don't you know when your crew went down each morning that the ten men that went down in the car didn't all belong to two crews?

A. Yes, sir.

Q. Did they or not?

A. Well, usually they were mixed up. We had company men and all in there.

Q. That is what I say; they were mixed up?

A. Yes, sir.

Q. They were mixed up as between crews; your crew got on separate trips?

A. Yes, sir.

Q. That is right, isn't it?

A. That is right.

Q. And some of them would get there in time for the first trip and some in time for the second trip, and some in time for the third trip, wouldn't they?

A. Yes, sir. They had to be or else they wouldn't have made—

Q. I am asking you—I want to get your unqualified answer. I say sometimes some of your men would come in time to catch the first trip, and some of them would not come in time to catch the first trip and would catch the second trip, and some would come at a time they had to catch the third one?

A. That is right.

Q. What did you say?

A. That is right.

Q. That is right?

A. Yes, sir.

Q. And the same thing that was true of your crew was true of all the other crews, wasn't it?

A. I reckon so.

Q. Don't you know it is so? What? Don't you know it is so?

The Court:

What is your answer?

The Witness:

I say—

The Court:

What is your answer?

The Witness:
Well, that is true.

Q. All right. That is all I wanted to ask you. Now, I believe you stated that up to about 1940 there was only one interval, one space in the mine where you rode; is that right?

A. Going down?

Q. Yes; there was only one ride?

A. That is right.

Q. And that man trip went down from the top to what point?

A. 48.

Q. That is where you rode?

A. Where we unloaded, 48.

Q. From that point on the men went to their various working places?

A. Yes, sir.

Q. I mean the production crews went to their various working places throughout the mine?

A. Yes, sir.

Q. And some of them had very short distances to walk, and others had longer distances to walk?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir, that is true.

Q. You stated with respect to tools the pick was yours, the shovel was yours and the bar was yours?

A. I didn't say the bar.

Q. The bar was not yours?

A. No, sir.

Q. The bar was the company's?

A. Yes, sir.

Q. And the drill was the company's?

A. Yes, sir.

Q. What else,—the hose was the company's, the water hose and air hose and pipe and things of that sort were the company's?

A. Yes, sir.

Q. What tools were there that belonged to you? When I say you, I mean the head miner.

A. Shovels, picks, hammers.

Q. Hammers?

A. Stillson wrenches.

Q. Shovels, picks, hammers and Stillson wrenches?

A. Stillson wrenches.

Q. Your caps?

A. Yes, sir.

Q. And your clothes?

A. Yes, sir.

Q. Now, you have stated about the life of these particular tools?

A. Yes, sir.

Q. And I believe it is true that when you bought those tools originally you didn't have to buy them from the company? You could if you wanted to, but you needn't; that is right, isn't it?

A. That is right.

Q. And the company would take them down to your working place for you, or you could take them down?

A. I have carried them down, and at times I have had them sent down.

Q. What is that?

A. I say I have carried them down and at times I have had them sent down.

Q. The company would take them if you requested it?

A. Yes, sir, they carried them at times.

Q. I say if you wanted them to do that then they would take them?

Mr. Harris:

He can't testify what they would or wouldn't do He has testified what they did.

The Court:

I sustain the objection.

Q. They never refused to take them?

A. No, sir, they didn't tell me they wouldn't take them.

Q. Every time you asked them to take them they took them?

A. No, sir, not all the time.

Q. How many times did that occur?

A. Well, several times from 1935 up to now I carried my shovel and the foreman would just tell me to carry it on down with me.

Q. When you took a pick or shovel down or anything else down, you were done taking them down until you needed another one?

A. Yes, sir.

Q. That is right, isn't it?

A. Yes, sir, that is right.

Q. Now, you spoke of getting off at this man unloading station and going to a yard, didn't you?

A. Yes, sir.

Q. Now, what was that yard that you are talking about?

A. Well, when the man trip goes down from the top the first stop for the men to unload is down at 48 or very close to it. When you get to the 48 you hit that flat right there. In that flat around the man loading station was the yard, and they have a desk where the mine foreman sits.

Q. The men had to go through that yard?

A. Yes, sir.

Q. They had to go through there to get to their work?

A. Yes, sir.

Q. Where was it you say you got your powder?

A. At the powder magazine.

Q. Where was that?

A. It was over about 62 or 63 left, number 2. I wouldn't be sure about the heading, but about there, somewhere along there.

Q. That powder magazine opened about 7:00 o'clock?

A. Sometimes it would open a little before 7:00 and sometimes at 7:00.

Q. I mean the rule was 7:00 o'clock?
A. About 7:00.
Q. What?
A. About 7:00 o'clock.
Q. About 7:00 o'clock, and when—when you got there and got there at seven o'clock, that was the time you lost from your working time at the face, wasn't it?

Mr. Harris:
We object to that, if the Court please. That is argumentative.

Mr. All:
Well, you have asked him—

The Court:
I think that is a question to be determined—

Q. Who got the powder?

The Court:
—by the Court.

A. The drill helper.
Q. You had five men in your crew?
A. Yes, sir.
Q. And one man got the powder?
A. That is right.
Q. It didn't take but one man to get the powder?
A. One man.
Q. How much would you use a day?
A. On an average I used a box a day.
Q. A what?
A. On an average I used a box a day.
Q. A box contained how much?
A. Fifty pounds.

Q. Fifty pounds? Where did you say you got the fuse and caps?

A. At the magazine.

Q. The same time you got the powder?

A. Yes, sir.

Q. As a rule that was at 7:00 o'clock?

A. Yes, sir.

Q. The same man that got the powder got the caps?

A. Yes, sir.

Q. The caps were small?

A. Yes, sir.

Q. You could stick them in your vest pocket or shirt pocket?

A. Well, on an average that is the way my helper brought them, in his pocket.

Q. Now, Jesse, you were paid more on account of the fact you owned your own tools, weren't you?

Mr. Harris:

We object to that, if the Court pleases. He couldn't know.

Mr. All:

Well, he might.

Mr. Harris:

That calls for a conclusion as to why the company set the rate,—you were paid more on account of the fact you owned your own tools. He couldn't possibly know.

The Court:

Sustained.

Q. You have always furnished the tools, haven't you; those tools you have been talking about?

A. I have bought picks and shovels and hammers and wrenches,—Stillson wrenches since I have been there.

Q. You traded with the company on the idea you owned the tools?

Mr. Harris:
We object to what basis he traded on. It calls for his state of mind.

The Court:
Well, I think it is apparent that is what he did. He went to work on that basis.

Mr. Harris:
Yes, sir.

The Court:
And furnished his tools.

Mr. All:
Yes, sir.

The Court:
He stated—

Q. With respect to your—Pardon me, Judge.

The Court:
That is all right.

Q. With respect to your wages, did you get some consideration on account of the powder you used?
A. Yes, sir.
Q. How much was it?
A. $9.90 a yard.
Q. Do you get a statement of it?
A. Yes, sir; it shows on your statement the amount of yardage you mine, and what it would amount to.
Q. And what it would amount to?
A. Yes, sir.

Mr. All:
Judge, just one second.

The Court:

Yes, sir.

Q. All right, Jesse. Mr. Harris asked you about you working on a tonnage basis, and I think you answered a question that if you only produced one ton that you got paid for one ton; is that what you said?

A. Yes, sir.

Q. I will ask you how many times you worked over there you didn't produce more than one ton?

A. Well, every time I turned off a place,—that is, when I worked out one place and they moved me to another place, that is the day I don't produce a ton.

Q. They pay you for the other kind of work that day?

A. Sir?

Q. They pay you for the other kind of work that day when you are not producing?

A. They pay the yardage.

Q. The day you are not producing you are working on a yardage basis?

A. Yes, sir.

Q. And get paid on a yardage basis?

A. Yes, sir; that is the way it was.

Q. He asked you about two crews being opposite each other, one a night crew and one a day crew. I don't know whether I understood you or not. If you were on a day crew you loaded what the night crew had shot down?

A. Yes, sir.

Q. And the night crew loaded what you had shot down?

A. Yes, sir.

Q. Did you mean to say there was some limitation on your day's work or your production by what the opposite crew had shot down?

A. Yes, sir.

Q. Well, now, if that night—have you ever had the night crew or the opposite crew shoot down so much as to

keep your tonnage down, and if they did, didn't you make make kick to somebody and rectify it?

A. No, sir, I haven't had them shoot down so much they kept my tonnage down, but I have had them shoot down so little is kept my tonnage down.

Q. What did you do?

A. I would go in there and drill all day and try to get enough shot down so if he makes a bad shot the next night I will have something to load.

The Court:

As I understand, you are paid on what you load and not what you blast?

The Witness:

Yes, sir. If the night shift—

The Court:

You are paid on what you actually load?

The Witness:

Yes, sir.

Q. You are the boss of both crews, aren't you? If the night shift didn't shoot down enough ore, that night shift was yours?

A. Supposed to be, but really I wasn't.

Q. Wasn't you the boss?

A. I was working in there, but I wasn't the real boss.

Q. You were paid for what they did?

A. If he shot down all the ore, if he was clear and it was my yardage, I got paid for it.

Q. You were the boss; you had charge of it?

A. I was supposed to be, but I wasn't.

Q. You mean because you were not there?

A. No, sir. What I mean is this: I would tell him to do something, but the night foreman would tell him, "I am boss down here. Jesse ain't the boss."

Q. You mean they could reduce your tonnage by failing to shoot the ore down?.

A. The tonnage that was left was what I got out.

Q. You worked as dilligently before 1941 as you do now?

A. Yes, sir.

Q. Your crew was just as good before this 1940 contract as it is now?

A. Yes, sir.

Q. And you work as long hours?

A. Yes, sir.

Q. You say since this 1940 contract you have never come under thirty-five tons?

A. I said my guarantee. I didn't say thirty-five tons.

Q. You said 90 percent?

A. Ninety percent of what 35 tons would come to at 15.3.

Q. You never have come—since you were put on this basis with a guaranteed tonnage, you have never come under the guarantee?

A. I run an average of 37 tons. What I mean by that, I may fall down a little bit today, but over a period of a week or two I go ahead and average up.

Q. You are ahead of the guarantee then?

A. I don't know about it being ahead of it, but they haven't had to pay me anything directly—I mean individually so far.

Q. Now, in this—after you leave the man unloading station and start to your working place, you say you walk all the way in—

A. Yes, sir.

Q. —the haulage ways, or part of the way in man ways?

A. Haulage ways.

Q. All the way in haulage ways?

A. Yes, sir, haulage ways.

Q. Those haulage ways have got a track in them?

A. Yes, sir.

Q. And have got cross ties on the track?

A. Yes, sir.

Q. That track is filled up—that space between the cross ties on the track is filled up so it is about flush with the top of the cross ties?

A. In some places it is, and some it is not.

Q. I mean as a rule.

A. In some places it is and in some places it is not.

Q. In the places it is not, it is pretty nearly so?

A. Well, I would say pretty near so.

Q. Pretty near so. All right. Now, you told Mr. Harris that the ore trips—the ore skips were run on that haulage way on which you walk?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Well, in the morning—in going down, was it?

A. In the morning when we would go down and walk 500 feet approximately and turn down that first incline, oftentimes the man trip slacks empties off behind us; I mean going down there to see if there was any ore standing there before we got down the hill.

Q. How often does that happen?

A. Every morning.

Q. Just one time?

A. Every morning.

Q. How many times would a trip pass you before you got to your working place?

A. Sometimes pass me three times.

Q. Well, suppose you didn't leave your working place until you were supposed to leave there at 3:15 in the evening; you wouldn't encounter trips on the track?

A. Not at 3:15, not coming out.

Q. If you stayed in your working place until 3:15, until your working time was over, you wouldn't encounter any ore skips on the track, would you?

A. Not coming out.
Q. Not coming out?
A. No, sir.

Mr. All:

Judge, I am about—I don't want to forget anything, if Your Honor will pardon me just a minute.

Q. You say there was a man at the top to supervise the loading?
A. Yes, sir.
Q. And there was a man at the hoodlum, the man loading or unloading station, to supervise the loading?
A. Yes, sir.
Q. And he would give the signal indicating it was a man trip, and the signal to move up or let down as the case might be?
A. Yes, sir.
Q. That is right?
A. Yes, sir.
Q. And while you were waiting for these trips, you sat down?
A. Yes, sir; we had benches there in our side where we could sit down.
Q. There are seats in the hoodlum where you can wait coming out?
A. Yes, sir.
Q. Now, in coming out, the various men from the various working places in the mine reached the hoodlum to come out at various times; some come too late to catch the first trip and catch the second trip?
A. Yes, sir.
Q. And some came too late to catch the first two trips and go out on the third trip?
A. Yes, sir.
Q. Just like going down in the morning?
A. Yes, sir.

Q. Is that right?

A. That is right.

Q. You said that there were electric wires above the walkway. I understood you to say that on that account there were two places where the men would have to stoop?

A. Yes, sir.

Q. Am I correct in that? I don't want to misquote you, but I thought I took down correctly what you said.

A. You are correct.

Q. I am correct? There were wires above?

A. Yes, sir.

Q. There were two places going to your working place where a man would have to stoop?

A. Yes, sir.

Q. All right. Now, I want to ask you where those places were or are.

A. Right at the nuck, at the place where I am working now. They put in a big air receiver to force the water up and there is a wire hanging there unless it has been taken up since I have been up there.

Q. How long has it been hanging there?

A. I guess a month or so.

Q. When you answered Mr. Harris' question, were you talking about the last month or so, or about the last three years?

A. Well, both.

Q. I will ask you about the last three years now. Where were those two places where you had to stoop?

A. Now, there was a place—

Q. Well, just mention one of them.

A. The place I have mentioned now hasn't been there three years. The place I did mention was right down the track about three or four hundred feet where there is a switch, one going this way and one that way. It stays there all the time.

Q. Where is that with reference to the nuck?

A. It is in the nuck I turned off before I went to the place where I am at now.

Q. You don't have to walk under that, do you?

A. Yes, sir.

Q. Isn't that in somebody else's working place?

A. I go in there too.

Q. You mean you go through it?

A. Yes, sir.

Q. Now, for what distance—for what distance is it advisable to stoop?

A. Oh, possibly 15 or 20 feet.

Q. About as far—a little further than from me to you?

A. Well, about fifteen feet, in my judgment.

Q. Well, how far do you think it is from me to you?

The Court:

Never mind the argument.

Mr. All:

Judge, I just want—

The Court:

Tell him to point out.

Mr. All:

Judge, that is just my way of asking it.

The Court:

It is wrong; it is wrong.

Q. How far is fifteen feet?

A. Fifteen feet is about back to your chair there.

Mr. All:

That is exactly what I had asked him.

The Court:

Well,—

Mr. All:

I just asked him in a different way.

Q. Where is the other place you had to stoop?

A. Right below the place I turned off, right before the 8th of this month.

Q. How long has that existed?

A. It has existed since we had a fall and tore the wire down. They didn't replace it.

Q. When was the fall?

A. It was about a day or so before the close of June.

Q. You mean this last June?

A. This last June.

Q. You didn't have to stoop there before last June?

A. Not at that place.

Q. I am talking about at that place.

A. No, sir.

Q. Is that a trolley wire?

A. Well, it is a wire—we call it a trolley. It is the one the motor wheel—motor pole is in.

Q. You have to go under the trolley wire?

A. Yes, sir; it is hanging right over the outer rail of the tracks.

The Court:

How high above the track is the trolley wire?

The Witness:

Well, the last day I worked there I had to bend my head to go under it. I am not so high.

Q. It has been there since June?

A. About the last two or three days of June.

Q. About a month ago?

A. About a month ago.

Q. Where is the other place you have to stoop? One of them is about ten or fifteen feet in that place. Where is the other place?

A. As I say out at the nuck where they turned off and put an air receiver there to pump water in and push the air up. There was one place there at that place unless they have remedied it since I have been up here.

Mr. Harris:

He has been into that before, Judge.

The Court:

I will let him ask how long it has been there.

Q. How long has it been there?

A. Well, it has been there—you know I told you they put me to driving a neck, and shooting that neck off it broke that wire and it has been hanging down ever since.

Q. When was that?

A. I went in there on the first day of last December.

The Court:

All right; that is sufficient.

Mr. All:

All right.

Q. During that work time—during this five years from '35 to May, 1941, you had—what was the length of your lunch period?

A. Didn't have any.

Q. What?

A. Didn't have any.

Q. Didn't have any lunch period?

A. No, sir.

Q. You didn't eat?

A. Between—just at chances.

Q. Don't you know the contract provided fifteen minutes for lunch period?

Mr. Harris:

We object to what the contract provides. It speaks for itself.

Mr. All:

I want to see if he is familiar with the contract.

The Court:

Overruled.

Q. Don't you know the contract specified fifteen minutes lunch period?

A. I am not disputing that, but we didn't take it.

Q. You didn't take the lunch period?

A. None of the tonnage men had the fifteen minute lunch period. The lunch period was taken up by the company men; they took it. We fellows working by the ton, we worked on through.

Q. You were the boss of your men, weren't you?

A. Yes, sir, in a small way.

Q. You mean you couldn't stop for lunch—

A. Not—

Q. —and your men couldn't stop for lunch?

A. I won't say they couldn't take it, but they didn't do it.

Q. Don't you know it is the contract—

Mr. Harris:

We object to what is in the contract.

Q. All right, Jesse.

The Court:

What is it you want? Do you want him to answer?

Mr. All:

Yes, sir, I would like for him to answer it. I want to see if he is familiar with the contract.

The Court:
What is the question?

Mr. All:
I want to know if he is familiar with the fact that under the contract he could stop for lunch.

Mr. Quinn:
Your Honor, he has answered it two or three times.

The Court:
Go ahead and answer it.

A. I say I am not disputing it was in the contract, but the condition that kept us from taking it—

Q. What was that? What conditions kept you from taking it?

A. All right. If we stopped for lunch that would automatically stop the run all the way to the top.

The Court:
Stop what?

The Witness:
Stop the run, the production, and whenever we didn't get our 35 tons the foreman got on us about it, how come we didn't get it. He would reprimand us for it, how come we didn't get it.

Q. The runs were stopped fifteen minutes for lunch?
A. Yes, sir, that was the contract.
Q. All right.

The Court:
All right.

Q. You said something, Jess, about a conversation with Mr. Costner about collar to collar. That was in connection with some pump men's grievance about traveling time?

A. Yes, sir.

Q. And you said that Mr. Costner said that particular crew could go on collar to collar?

A. Yes, sir.

Q. He said that on Friday, and the next day told you he would have to call it off?

A. Yes, sir.

Q. Or sometime after that he would have to call off the collar to collar?

A. I didn't say he told us that on Friday.

Q. Whenever it was.

A. On Tuesday.

Q. When was it he told you that particular crew could go on collar to collar?

A. The following Monday.

Q. How long was it before he said he would have to call it off that he had told you that crew could go on collar to collar?

A. On the Friday following that Tuesday,—it was on Tuesday he told us they could go on Tuesday, and then on Friday we got word he wanted us to come by the office.

Q. When was that?

A. It was September last year, but I wouldn't say the date.

Q. September, 1940?

The Court:

Are you going to ask him about that?

Mr. All:

I had asked him about it.

The Court:

You interrupted him just now.

Mr. All:

Judge, I didn't consciously interrupt him.

Q. Go ahead and tell what you wanted to say.

A. On Friday we got word to come out of the mines and go by the office, that they wanted us at the office; didn't say what he wanted.

We went in there and Mr. Costner was sitting there, and he said, "I called you fellows here to tell you I will have to change the ruling on that collar to collar appointment.

Q. And that was when you were talking about, in September, 1940?

A. Yes, sir.

Q. Now, you said in 1934 after you joined the union and got to be a committeeman that you made—the committee made some six hour proposal, six hour a day proposal.

A. Yes, sir.

Q. Was that in writing?

A. As I said, I wouldn't just say it was exactly in writing, but in the conversation that followed, in the negotiations I know it was discussed.

Q. You belonged to the committee, didn't you?

A. Yes, sir.

Q. Do you know whether the committee took something in writing, the six hour a day proposal in writing to the company?

A. I wouldn't say we took it in writing, but we carried them a proposal and it was discussed.

Q. What do you mean by carrying a proposal?

A. Like I would take something in my hand, and took it to you.

Q. You took a proposal then?

A. Yes, sir.

Q. That proposal had to be in writing, didn't it?

A. The one we handed him had to be in writing. This proposal—

Q. The one you handed him—Who was it you were talking about?

A. I don't know whether the president or some of the other board members.

Q. Board members?

A. It was presented by the committee as a whole to him.

Q. To him? To whom?

A. Mr. Marshall.

Q. The proposal you presented to him—

The Court:

You have been over that.

Mr. All:

Judge, I don't think I have.

The Court:

Yes, you have.

Q. The proposal you handed to him, did it have the six hour day in it?

A. I wouldn't say—

The Court:

What you handed him was in writing?

The Witness:

Yes, sir.

The Court:

All right; it was in writing.

Q. That was the six hour proposition?

A. Yes, sir.

Q. It was in writing?

A. Yes, sir, it was in writing.

Q. Have you got a copy of it?

A. We didn't keep no copy,—I didn't.

Q. Jesse, of course you demanded the six hours and travel time at the same time?

A. No, sir, we didn't demand anything. Mr. Marshall asked us, "Are these requests or demands?"

We told him it was requests.

He said, "If they are demands, I will tell you to get out the door."

Q. Then you said Mr. Marshall told you about some national basis?

A. Yes, sir.

Q. What was that?

A. He started in the district and outlined ore mining in this district, and he said it had never been practicable in this district, and then he went up north in what he said was the Eastern Seaboard where they sell most of their pig iron, and not practical up there, and then went up in the Lake Shore Region and said it was not practicable up there.

Q. You talked to him at some length?

A. We listened to him. I wasn't familiar with the history of mining—

Q. Well, you—

Mr. Harris:

Let him finish.

Q. Go ahead.

A. The history of mining he was outlining, I wasn't familiar with it.

Q. You knew when he said the Lake Shore Region he meant up in Michigan and Minnesota and Wisconsin?

A. After he explained it I did.

Q. He explained it hadn't been practicable up there?

A. That is what he said.

Q. And hadn't been practicable in other regions?

A. Yes, sir.

Q. And he couldn't start it down here?

A. That is what he said.

Q. That was in 1934?

A. Yes, sir.

Q. Then you said after that you proposed something else?

A. Yes, sir.

Q. What was that?

A. After he turned down this proposal we had several other meetings with him then going up to May 1st of the same year.

Q. That was 1934?

A. Yes, sir.

Q. All right.

A. In each proposal—in each conference we had with him, we would approximately go over the same thing. We finally asked for a seven hour day and pay one way, and we didn't get that.

Q. What was it he said about national there in connection with that?

A. Sir?

Q. What was it he said about the seven hour day and pay one way?

A. It wasn't practicable; no company was doing that and he didn't think the Sloss Company would put it in ahead of any other company.

Q. What was it he said about that strong union?

A. He said, "You are asking more than the United Mine Workers." He said, "The powerful Mine Workers is already recognized, and they only have an eight hour day. You ask for too much and you can't get it."

Q. You know who he was talking about?

A. Yes, sir.

Q. Who was it?

Mr. Harris:

We object to that. Everybody knows who he was talking about.

Q. The coal miners union?
A. The coal miners union, yes, sir.
Q. Yes.

Mr. All:
I believe that is all, Judge.

Re-Direct Examination.

(By Mr. Harris):
Q. Jesse, when you would start down in the mine of a morning, did you have any duties with respect to any other crew than your own?
A. No, sir.
Q. Did they ever have you to check other crews in when they were going down of a morning?
A. No, sir.
Q. Did they ever have you to load the man trips and assign men to the man trips as they went down in the morning?
A. No, sir.
Q. And were the cars that went down confined entirely to tonnage men or did they have tonnage men and company men both on them?
A. All.
Q. Now, in going there of a morning at six o'clock would you ordinarily find just one man trip load waiting there, or would you usually find that the men as a whole were there?
A. The men as a whole.
Q. On a tonnage basis, the quicker you got to your drilling place the quicker you got started making money?
A. That is right.
Q. And when you were on a tonnage basis without a guarantee and you got to your drilling place, did you wait until seven o'clock to start drilling,—I mean preparing your place, or did you start just as soon as you got there?

A. As soon as I got there.

Q. Now, this question of yardage and tonnage; suppose your crew produced ten tons of ore, would you get paid for ten tons of ore and for yardage both for the same shift?

A. Yes, sir, provided, as I said to start with, that yardage is mostly absorbed in shooting powder. You are allowed 11 cents a ton, but you can't shoot narrow work for 11 cents.

Q. If you produced ten tons of ore, what did you get paid for?

A. Ten tons.

Q. Have you got any of those slips they ever paid you where they showed how many tons you produced?

A. Yes, sir.

Q. Have you got any of them at home?

A. Yes, sir.

Q. Did they keep showing on those slips on up to May 1, 1941, the number of tons produced?

A. Yes, sir, in some—once in a while your statement wouldn't show the amount of tons; not every time, but sometimes.

Q. What did it show in places of the tons?

Mr. All:

We object to that. The statement is the best evidence?

A. Well, it would just show the money.

Mr. Harris:

All right. I think that is all, Your Honor.

Mr. All:

That is all.

(Witness excused.)

The Court:

We will convene at a quarter of two. Everybody is excused until then,—a quarter of two.

Court is adjourned.

(Whereupon, at 12:25 P. M., July 28, 1941, a recess was had until 1:45 P. M. of the same day.)

After Recess, 1:45 P. M.

The Court:

Who will you have?

Mr. Harris:

Call Mr. J. W. Gilbert.

2815 J. W. GILBERT, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. Are you Mr. J. W. Gilbert?
A. Yes, sir.
Q. How old are you?
A. Forty.
Q. Where were you born?
A. Bessemer.
Q. How high did you go in school?
A. About the Eighth.
Q. What kind of work do you follow?
A. Mining.
Q. What company do you mine for?
A. Sloss-Sheffield Steel & Iron Company.
Q. How long have you been working for them?

A. Since December, 1929.

Q. What kind of work have you done for them?

A. Well, at present I am head miner.

Q. Well, what did you do for them when you first started?

A. I was drag engineer when I first started.

Q. How long were you drag engineer?

A. About—about three years.

Q. Then what did you do?

A. Head miner.

Q. So you have been a head miner since 1931?

A. No; I will say about '34.

Q. About '34?

A. Yes, sir.

Q. Well, since October, 1938, whereabouts have you worked?

A. You mean what places in the mine?

Q. What mine have you worked at?

A. Number 2, Sloss.

Q. How far is that from Ruffner?

A. Really, I have never been to Ruffner, but I would judge it is about ten mines, twelve, something like that.

Q. Well, when you—along in October, 1938, and from that time up to May 1, 1941, were you working on the day shift or night shift?

A. Day shift.

Q. What time would you report at the change house every morning?

A. Well, I usually get to the bath house anywhere from —about fifteen minutes until six.

Q. And what did you do after you left the bath house?

A. I would go on up to the tipple, to the mines.

Q. Well, when you got up to the tipple, did you pick up carbide there?

A. No, sir.

Q. Where did you get the carbide for your lamp?

A. I would usually buy it—sometimes at the commissary, and sometimes I would wait and get it the next morning when I was coming on to work, and get it at some store.

Q. Would you have your carbide and lamp when you left the bath house?

A. I would have them when I left the bath house.

Q. When you got to the tipple, did you turn in any brass check?

A. No, sir.

Q. When you got up there, did you make any report to anybody you were there?

A. The foreman.

Q. The mine foreman?

A. Yes, sir.

Q. What time during those three years from October, 1938, to May 1, 1941, did you report to the mine foreman you were there?

A. It would run along about six o'clock.

Q. As head miner did you have any particular drag you could catch?

A. They usually run three or four. I didn't catch any particular one at any time.

Q. Did you have any instructions from the mine foreman or assistant mine foreman or section foreman as to what drag you should take going into the mine?

A. Yes, sir.

Q. What drag did they order you to take?

A. We were at one time ordered to catch the first drag.

Q. Well, how long was the period you were under order to catch the first drag?

A. I couldn't say unless it is still in force up to May 1st.

Q. Well, do you still catch the first drag up to May 1, 1941?

A. No, sir.

Q. When did you quit catching the first drag?

A. Well, very few times I had an opportunity to catch the first drag going in.

Q. Why?

A. Well, seeing about supplies and men.

Q. Well, when you reported to the mine foreman, did he have any tally sheet or book or anything else that he made any record in when you reported you were there?

A. He had a time book.

Q. And then after you reported you were there you said you had other things to see about that kept you from catching the first drag?

A. Well, yes, sir, I had—.

Q. Well what—name some of the things you had to see about that would keep you from catching the first drag.

A. Naturally, as a head miner, we would have to see about our crews, see what the night shift had done, whether they had had any breakdowns or anything, order the necessary parts we needed.

Q. Well who did you find out from—From whom did you find out whether there had been a breakdown?

A. As a usual thing the night crew would leave a report.

Q. Where did you get it?

A. I don't know who they would leave it with. I would usually get it from the mine foreman or assistant mine foreman.

Q. You would find out from the mine foreman or assistant mine foreman whether there had been any break downs on the night shift?

A. Yes, sir.

Q. What about your crew, did you find out whether you had a crew from anyone, or did you report to the foreman whether or not you had a crew?

A. As a usual thing, when I seen I had a crew, I would usually report to the foreman.

Q. After you reported to the foreman, what did you do?

A. Why, then, we would go and get the man trip.

Q. What did you do about getting supplies? What supplies did you have to get?

A. Well, we had hangers and wedges and such things.

Q. Well, what did you do? What did you have to arrange about getting hangers and wedges and such things?

A. Well, as a usual thing—I can't say how far back, but as a usual thing they delivered hangers and wedges up to the mine. They had a box they put them in and we went and got them out of the box.

Q. Was that on the way in?

A. Yes, sir.

Q. How far was that box from the place where you boarded the man trip?

A. Oh, about—between 30 and 50 feet.

Q. Did you carry them with you down on the man trip?

A. Yes, sir.

Q. Did you have any pail or bucket or basket to put such things in?

A. No.

Q. During your work with the Sloss Company did you buy any tools yourself?

A. Yes, sir.

Q. What tools did you buy?

A. We buy our hammers, shovels, picks and wrenches.

Q. What about your powder?

A. Well, we have that—we buy—that is charged to the head miners.

Q. Well, tell whether or not your drill helper or anybody in your crew used a sack or anything else in which to carry the dynamite from the magazine to the drilling place?

A. They used a sack.

Q. Where did the miners in Sloss Number 2 from October 24, 1938, to May 1, 1941, get the oil for their drills?

A. They would get their oil underground, I would say about halfway to their working places.

Q. When did they get it?

A. After they got down to the first landing.

Q. Was that a daily occurrence?

A. Usually is for the drill runners.

Q. Now, did you have anything to do with any other crew when you started into the mines in the morning?

A. No, sir.

Q. Did you have anything to do with starting the man trip down?

A. No, sir.

Q. Who determined when the man trip would go down?

A. Well, the chainer handled the man trip. He knew what time to run it.

Q. Well, who determined whether or not they had a load?

A. The chainer.

Q. Now, in coming back out of the mine, as you approached the end of your shift, could you get on any man trip that you wanted to?

A. Yes, sir.

Q. How did you get to the man trip?

A. Well, we usually walked then.

Q. Well, did you go through a bull pen or did they have a bull pen for the white people?

A. No, sir, we didn't go through a bull pen.

Q. Did you have anything to do with determining when the man trip started out—

A. No, sir.

Q. —towards the top?

A. No, sir.

Q. When you got out to the top was there anyone there to catch your time or check your time as far as you know?

A. Well, there was usually someone there, but they never checked you out.

Q. They never checked you out?

A. No, sir.

Q. Now, in the place where you were working from October 24, 1938 to May 1, 1941, approximately how far did you walk from the main man unloading station?

A. I would say it is—would be between three and five hundred feet. I don't know exactly.

Q. Well, coming back at the end of the day, were you walking—after you had fired your shots,—

A. Yes, sir.

Q. On the way out would you be walking downhill or uphill?

A. No, sir; uphill.

Q. What would you say was the pitch of that slope that you were climbing on the way out?

A. It varies a little bit. I would say, to average it up all the way, would be between 20 and 24 degrees.

Q. Well, when you—ordinarily when you fired your shots, would you be—you and the members of your crew, at the end of the drilling, would you be wet with sweat or otherwise?

A. You mean when we quit work?

Q. When you quit drilling.

A. Well, some of them would be and some of them wouldn't.

Q. Now, when you arrived at the man unloading station after walking, what would be the condition of the men with reference to a sweaty condition?

A. You would be pretty hot when you got there.

Q. Has there been any change in the way the men are carried into the mine since May 1, 1941, and what it was from October 24, 1938, up to that time?

A. Yes, sir; there has been some changes.

Q. What changes have been made at Sloss?

A. Well, in last—in the fall of last year they put on another man trip on the inside.

Q. All right. That was in the fall of last year?

A. Yes, sir.

Q. That was down underground?

A. Yes, sir.

Q. After you left the main unloading station?

A. Yes, sir.

Q. Then they put in another man trip down there?

A. Yes, sir.

Q. That man trip was pulled by a hoisting engine, I suppose?

A. Yes, sir.

Q. With a drum?

A. Yes, sir.

Q. Now, on May 1st what changes were made?

A. Well, about—on May 1st about the only changes I know was they went on from collar to collar and they added some more cars to the man trip.

Q. Well, did they give you any directions about the time you were to report or check in to go down on the man trip?

A. Yes, sir.

Q. What change in directions were given?

A. Well, the change that was made was that I ride the last drag inside in the morning, check in and ride in the last drag in.

Q. Well, do you know whether or not on or about May 1st they assigned certain men to the first trip and certain men to the second, and certain men to the third just as they assigned you to a certain trip?

A. Yes, sir.

Q. But they had that stagger system there?

A. No, sir.

Q. Not before May 1st?

A. No, sir.

Q. From October 24, 1938, to May 1, 1941, as a usual thing, did all the men report at the mouth of the mine around six o'clock in the morning or did they come in at various and sundry times?

A. Well, they didn't all report there at the same time. They kept on up until about the time for the last drag.

Q. Well, at six o'clock, as a usual thing, how many men would you find were there that reported around six o'clock?

A. I would say the majority of them were there.

Q. The majority of them were there?

A. Yes, sir.

Q. Now, since May 1st they have a time clock, don't they?

A. Yes, sir.

Q. Before that had you ever seen a time clock there? Did anybody ever check up on your time or get your time when you were leaving?

A. No, sir.

Q. Either underground or up on top?

A. No, sir.

Q. How were you paid for the years from October 24, 1938, to May 1, 1941?

A. Paid on tonnage.

Q. What price did you get for a ton?

A. A head miner gets 4½ cents a ton, and he has a powder allowance in there.

Q. He gets an allowance of 4½ cents a ton for powder?

A. No, 11 cents for powder, and he gets 4½ cents for his ore.

Q. Then your price was 15½ cents per ton?

A. That is right.

Q. And that was your price from October, 1938, up until what time?

A. That is my price now. You see, we had a raise here not so long ago. They raised us to that price.

Q. Well, what was it before they raised it to that price?

A. It was 15.1 cents.

Q. Now, then, from October, 1938, up until May 1, 1941, suppose you and your crew produced four tons of ore; how much would you get paid for on that shift?

A. Let me get that straight. Up until '41?

Q. Yes, up to May 1st this year,—up until September, 1940, before the guarantee went in; suppose your crew produced four tons of ore on a shift; how much would you get paid for?

A. That is all we got paid for.

Q. Then, in September, 1940, did you get a minimum guarantee?

A. Yes, sir, we had a minimum guarantee.

Q. Now, what was the minimum guarantee on which you were paid after September, 1940?

A. I can't be positive about that, but it was around six dollars.

Q. Well, did you—do you know whether or not you have been paid on that guarantee any time or whether you have merely been paid what you earned on a tonnage basis?

A. Well, since the guarantee has been in effect, why, I—me and my crew has usually made ours.

Q. You usually made your minimum?

A. Yes, sir.

Q. Now, during all those years that you were working out there before 1938, were you working on a tonnage basis?

A. Not all of them. There was some little time that we were on day work.

Q. How long did that last?

A. I believe that was—that was while I was running a drag engine. It lasted about—I believe about two years.

Q. Now, during that time when you were on day work, what time did you go into the mine?

A. About—anywhere between six and six-thirty.

Q. And what time did you get out on top?

A. Anywhere from 5 to 7.

Q. From 6 to 6:30 you went in, and you would get out from 5 to 7?

A. That is right.

Q. How many hours would you get paid for when you were in the mine from 11 to 13 hours,—11 to 12½ hours?

A. I believe at that time we were getting paid for nine hours.

Q. Getting paid for nine hours and being in any time from 11 to 12 hours?

A. Yes, sir.

Q. Now, have you ever been a member of a service crew?

A. Service crew?

Q. Yes. What is the difference between company men and production men?

A. A company man, you might say is a maintenance man. The production man is the one that gets the ore, gets it loaded.

Q. Now, from October 24, 1938, to May 1, 1941, did the maintenance men go down in the mine on the man trip with the production men?

A. Yes, sir.

Q. And did they come out on the man trip with the production men?

A. Yes, sir.

Q. They did?

A. Yes, sir.

Q. What kind of work was done—maintenance work done in that mine from October, 1938, to May 1, 1941?

A. There were all kinds of work to be done to operate the mine, maintenance of the drags, track work, timber work.

Q. Did the company furnish the tools with which those maintenance men worked?

A. I can't say. I think they do.

Q. Did you ever notice any of those maintenance men carrying tools down with them on the man trip, on the drags?

A. At times I believe I have seen them carrying shovels and hammers.

Q. Did the maintenance men have to use carbide lights the same as the production men?

A. Yes, sir.

Q. The maintenance men, did they just work down in the mine at the man unloading station, or did their work from time to time carry them into the mine?

A. They went all over the mine.

Q. All over the mine?

A. Yes, sir.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr. All):

Q. Mr. Gilbert, you have been working for the Sloss Company for how long, did you say?

A. Since '29, December.

Q. Since 1929?

A. Yes, sir.

Q. Now, how long have you been a head miner?

A. I believe it was in 1934 that I went on as head miner. I won't be positive, but I think it was in August, 1934.

Q. And that was out at Sloss Number 2?

A. Yes, sir.

Q. Now, Mr. Gilbert, Mr. Harris has asked you about the practice and your practice in a general way since—between October, 1938 and May 1, 1941. Do you understand?

A. Yes, sir.

Q. Well, I want to ask you if those practices which you have testified about and which I will ask you some more, existed prior to 1938 and as far back as 1934 in the main?

A. Yes, sir, they did.

Q. The same thing?

A. Practically.

Q. Now, when you first became head miner, where was your first working place?

A. In 74 left, Number 2.

Q. 74 left?

A. Yes, sir.

Q. At that time did you operate—I mean by you, your crew,—operate a mechanical loader, or were you—did you use the shovels?

A. Mechanical loader.

Q. Mechanical loader. How many men at that time—while you were in that first heading, how many men were there in your crew?

A. At that time there were nine.

Q. Nine?

A. Yes, sir.

Q. They were assigned to particular jobs according to their fitness?

A. Yes, sir.

Q. Now, what were they?

A. They were drag engineer, drillmen, drill helper, muckers.

Q. Did your nine men include yourself or exclude yourself?

A. With myself.

Q. With yourself?

A. Yes, sir.

Q. How many of each classification did you have in your crew?

A. We have two drill runners, two drill helpers, one drag engineer, and three muckers.

Q. Three muckers?

A. Yes, sir.

Q. Now, how long did you continue to work in that working place, that first working place that you were assigned to?

A. It must have been about three years.

Q. About three years in that one place?

A. Yes, sir.

Q. And there were few days that you didn't work in that heading, weren't there, Mr. Gilbert; I mean relatively few days?

A. Well, unless there was an off day or something like that and we had company work or something like that to do.

Q. What I mean by that, the days you worked you worked, you would say, nearly all of them in that heading?

A. That is right.

Q. Or in that working place?

A. Yes, sir.

Q. Now, during those three years, did you have in the main practically your same crew?

A. We had some changes off and on.

Q. You had some of them that stayed with you throughout the whole period?

A. That is right.

Q. Quite a number of them?

A. You might say half of them were with me all the time.

Q. And the others were there some considerable time during that period, those that were not there during the entire time?

A. Well, I had some men during that period that didn't stay with me but a short time, and then I had some that stayed all the way through.

Q. Then, after you moved from that working place, what was the next heading or stop or working place you were assigned to?

A. 79 left.

Q. 79 left?

A. That is what we call it.

Q. That is a little further down?

A. Yes, sir.

Q. And how long did you remain in that working place continuously?

A. I think I was in there about two years.

Q. About two years?

A. Maybe a little bit longer.

Q. So that you would say in neary all of your working days during those two years you were working in that working place about as consistently as you were working in the other one for those three years?

A. Yes, sir.

Q. Did you have during those two years nine men,—not the same nine men, but nine men in your crew?

A. No, sir.

Q. How many did you have?

A. We had eight.

Q. Eight? So you had a reduction of one man?

A. Yes, sir.

Q. What capacity was the man that was left off?

A. Drill helper.

Q. So you had one less driller?

A. Yes, sir,—drill helper; not driller.

Q. Sir?

A. Drill helper; not driller.

Q. Drill helper?

A. Yes, sir.

Q. Now, what was the next working place?

A. 86 right, Number 1.

Q. Number 1, 86 right?

A. Yes, sir.

Q. How long did you remain continuously in that heading?

A. Up until the present.

Q. Up until the present time?

A. Yes, sir.

Q. And you are still there?

A. Yes, sir.

Q. So that, during your whole experience, you have been in three headings practically continuously?

A. That is since I have been a head miner.

Q. That is what I mean, since 1934.

A. Yes, sir.

Q. Now, the first thing you did when you went to the mine in the morning was to change your clothes?

A. Yes, sir.

Q. Then you went over to the tipple or the mouth of the mine?

A. That is right.

Q. And most of the time you had brought your carbide with you?

A. Yes, sir, we brought it with us.

Q. And you said over there you reported to whom, the foreman?

A. Yes, sir.

Q. Mr. Gilbert, you just reported to him to tell him you were there that day?

A. Yes, and to find out the working conditions and things like that; see what the night shift had done.

Q. See what the night shift had done?

A. Yes, sir.

Q. What do you mean by that?

A. See what ore they had run; if they had had any breakdowns or anything; what was the trouble.

Q. Well, you found a breakdown or trouble very occasionally, didn't you?

A. Well, we have it once in a while.

Q. Reasonably seldom? Sir?

A. We have it once in a while.

Q. Well, about how often would you say?

A. Well, that would be kind of hard to say how often they are off handed. Some of them were close together and sometimes be a good while apart.

Q. Sometimes six months apart?

A. No, I don't think six months apart.

Q. Have more on the night shift than on the day shift?

A. Beg pardon?

Q. Have more of that sort of thing on the night shift than on the day shift?

A. No, I can't say we did.

Q. That sort of thing wasn't a daily occurrence?

A. No, not daily.

Q. It didn't happen every other day, did it?

A. Not regularly every other day.

Q. Well, now, what else would you find out?

A. Well, if we needed anything we generally ordered it from the supply house, or we seen about hangers or wedges or pulleys or things like that.

Q. I am talking about his ordering you,—I am talking about what you were doing with him?

A. With the mine foreman?

Q. Yes.

A. We would stick around and see if we had a crew; see the mine foreman about—

The Court:

Talk louder.

Q. What would determine what you had to do?

A. Well, from the time we left the bath house and went up to the tipple to see the mine foreman to find out what happened on the night shift we would be looking for our crew to show up at the same time, and we would see about hangers—

The Court:

Hangers?

The Witness:

Hangers or wedges or bolts or anything we needed.

Q. What do you mean by seeing about them?
A. If there were any up there we would get them.
Q. Well, suppose you had some down there—

The Court:
Let him—go ahead.

Q. —what would you do then?
A. You mean in the mine?
Q. Yes, sir.
A. We needed them to work with.
Q. Did you see about them every day?
A. No, not every day.
Q. That is what I am trying to get. How often would you have to have a hanger?
A. I would say we would get some two or three times a week. We tried to get some every time we were up there.
Q. To try to keep a supply ahead?
A. Sure.
Q. You wanted to keep a supply ahead?
A. Sure.
Q. You mentioned something else in addition to the hangers and wedges,—get them every day?
A. Well, we got them about every day,—about like we got the hangers; got them with the hangers.
Q. You mentioned something else?
A. Bolts.
Q. Get them every day?
A. Got them with the hangers.
Q. Every day?
A. Not every day.
Q. When you got them one man would take them down?
A. Not hardly.
Q. Two men could carry them?
A. Two men could carry them.

Q. Take them in their pocket?

A. No, couldn't take them in their pocket.

Q. How did they take them?

A. In their hands.

Q. They could put bolts in their pocket?

A. Yes, sir, they could.

Q. They could carry wedges in their pocket?

A. By tearing their pockets out.

Q. I mean there wasn't any particular weight to any of them?

A. Well, yes. They are not light.

Q. What do you mean by not light? How much would they weigh?

A. I couldn't say about the bolts and wedges, just what they would weigh. A hanger, I imagine, would weigh—I don't know exactly,—two or three pounds, along there,—four.

Q. Well, the bolts and wedges weighed a lot less than that?

A. Yes.

Q. They didn't weigh anything much?

A. Well, they weighed enough if you put two or three of them together, you wouldn't want to carry them in your pocket.

Q. You said something about a breakdown in the heading with the night crew. What sort of breakdown did you have in mind?

A. Well, we have machinery there, the hoisting engine, have the loader, what we load ore with, drills.

Q. To what extent would that sort of thing change your plans for the day?

A. Well, it just depends on how bad it was and what it was. It wouldn't throw us off but an hour or two, sometimes, and maybe all day sometimes.

Q. Wouldn't go down at all that day?

A. If we knew about it on the outside.

Q. Suppose it wasn't bad?

A. We would go down and wait for it to be fixed.

Q. Who would fix it?

A. A mechanic; sometimes we would help him.

Q. Well, delays and things of that kind were very infrequent, weren't they?

The Court:

You have been over that.

Mr. All:

I don't remmember it, Judge.

The Court:

You have been into it minutely. You have asked him minutely about that.

Q. Now, he asked you about the powder. Where did you say you got the powder from?

A. From the powder magazine.

Q. That was near the first man unloading station?

A. Well,—no it is not close to it. On Number 2 side, I would judge, to begin with, before they moved the magazine, it was about half way.

Q. And that place opened about seven o'clock?

A. I couldn't say because I don't go by the magazine, —very seldom I go by there.

Q. You never went by there yourself during the seven years—

A. Yes, I have been by there.

Q. But you don't do it frequently?

A. Not often.

Q. Probably not once every six months?

A. Well, I went by oftener than that.

Q. But you don't know what time it opened?

A. No, not exactly, I don't know what time it was opened.

Q. Caps were gotten in the same place?

A. Yes, sir.

Q. It was not necessary for but one man to go by there?

A. Yes, sir, on a drag sometimes two men went by.

Q. But not all the time?

A. Pretty well all the time.

Q. Now, you have mentioned the oil. Where did you get the oil?

A. At the first landing.

Q. How many men got that?

A. The drill runner.

Q. Just one man out of the crew?

A. Yes, sir.

Q. Was that every day or every other day?

A. Usually every day.

Q. How much would you get?

A. It was just owing to the can we had. Maybe half a gallon one time, and sometimes maybe two gallons.

Q. That was there so you could get the oil as you needed it?

A. Yes, sir, but we usually got it as we went in so we wouldn't have to send back.

Q. That was the reason you got it as you went in, to avoid having to send back?

A. Well, in a way it was, to save time going back; just having to travel the same distance twice.

Q. Now, after you reported and told the mine foreman you were there, you didn't have to talk to the mine foreman about having to get a hanger or bolt or anything of that sort; that wasn't necessary to get the hanger or bolts?

A. Yes, sir, it was necessary.

Q. You couldn't get them without talking to him?

A. Yes, sir. I would get the key from him to get them out of the box.

Q. He had a key?

A. Yes, sir.

Q. During the time you were over there, Mr. Gilbert, you were never paid for travel time, were you?

A. Not that I know anything about it.

Q. Well, you would know it if you had, wouldn't you?

Mr. Harris:

Well, we object to that; it is argumentative.

The Court:

It is argumentative.

Q. Well, I will ask you if you know whether you were paid for travel time or not,—

The Court:

He has already said he hasn't been that he knew about.

Q. Now, what time during those several years from 1934 on until May 1, 1941, did you report at your working place to begin the day's work?

Mr. Harris:

We object to that; calls for a conclusion as to what—

Mr. All:

I am cross examining the witness.

Mr. Harris:

No; wait a minute.—"report at the working place to begin your day's work"?

Mr. All:

That is what I want.

Mr. Harris:

The question when he begins the day's work is the question for the Court to decide. If he means the area around the working face—

The Court:
Specify where you mean.

Q. Well, to begin your productive work?

The Court:
Specify what you mean.

Q. What time did you get into your working place?

The Court:
Answer the question.

A. What time did I get to the working face?
Q. Working place, yes, sir.
A. Well, our work usually began when we left the bath house.

Mr. All:
I move that answer be excluded as not being responsive.

Mr. Harris:
I object to it being excluded.

Mr. Burr:
He said he began his work at the bath house.

Mr. Harris:
After he left the bath house.

Mr. All:
I move to exclude that as not being responsive.

Mr. Harris:
Well, I think it is responsive, if the Court please. Let's see the question.

Q. Mr. Gilbert,—

Mr. Harris:
Wait a minute. Let's see—

Mr. All:
I will withdraw that and ask him another question.

Q. You know what I mean by working place?
A. I know what you mean by working face.

The Court:
What?

Mr. Harris:
Mr. All didn't listen to the answer.

Mr. All:
He said, "I know what you mean by the working place."

The Court:
He said, "working face."

Q. All right; the working face; that is where you do your work?
A. That is where I start the producing of ore.
Q. Well, what time did you get to your place where you start the production of ore during those years I am talking about?
A. From '34 to '38?
Q. From '34 to '41, until May, '41.
A. Well, we usually got there around seven o'clock.
Q. That was the time you were supposed to get there, wasn't it?

Mr. Harris:
We object to whether he was supposed to get there under a tonnage basis.

Q. Under the custom? That was the time it was the custom to get there?

Mr. Harris:

We object. It is a question of what he did.

The Court:

It is not a question of the custom; it is what he did.

Mr. All:

Well, I want to raise my point.

Q. That was the custom and practice, for you to get there at seven o'clock?

A. Anywhere between 6:30 and 7:00 o'clock.

Q. What time did you leave?

A. The top of the ground?

Q. Yes, sir.

A. We usually left—

Q. No, the bottom of the ground coming back; went did your work stop at the face?

A. Well, along in 1934 on it has varied. It has come down some to what it was in '34.

Q. Well, just tell us when it came down and what were the circumstances under which it came down, Mr. Gilbert, up until May 1, 1941?

A. Well, we began to get shorter hours. At first, back before 1934, we were working ten hours.

Q. I am talking about since '34.

A. We come down to nine hours.

Q. What time did you get to the working face when it was ten hours?

A. Oh, practicaly the same time.

Q. What time was that?

A. Between 6:30 and 7 o'clock.

Q. What time did you leave?

A. When we were working ten hours we left when we could.

Q. Did you work under the eight hour system or ten hour system in '34?

A. I believe the eight hour system taken affect in '34.

Q. Well, didn't you get to your working place at 7 o'clock; wasn't that the requirement and the rule, to get there at 7 o'clock; to leave the top so you could get to your working place at 7 o'clock?

A. I will tell you; I couldn't be sure back then whether it was 7 o'clock or not, but I know we was always there before seven.

Q. Well, what was the shooting time in the afternoon for the day shift?

A. Back then I believe it was four o'clock.

Q. I am talking about under the eight hour system.

A. Oh, the eight hour system—

Q. Forget the ten hour system.

A. —it was 3:10.

Q. Sir?

A. 3:10.

Q. 3:10?

A. Yes, sir.

Q. So you were at the face for eight hours?

A. Yes, sir.

Q. Now, who left first, you and your drill men or the muckers and the other members of the crew?

A. The drag crew usually leaves out a little ahead of the drill men.

Q. How far out?

A. Well, just ahead of them; if they are loading a trip at quitting time they will go out almost together.

Q. Catch the same trip out?

A. No, sir, not always.

Q. Very seldom?

A. Well, I would say my crew do not hardly ever catch the same trip. Some ride the first and some the second and some the third.

Q. That is true throughout the entire period?

A. Something like that.

Q. I mean ever since you have been head miner?

A. Yes.

Q. And it is true that the men caught various trips, depending on what time they got there going in just like coming out?

A. Yes, sir; I would have some of my crew ride the first drag down and probably catch the last one out.

Q. I am talking about going down; you didn't catch the same drag going down?

A. Not always.

Q. And very seldom you did?

A. Well, the majority of them rode the same drag.

Q. Usually the first one or the second one?

A. First one.

Q. You didn't go on the first one usually?

A. Not always.

Q. Mr. Harris asked you if now, since May 1st, you didn't have some men scheduled to catch the first drag, and some men scheduled to catch the second trip, and you said yes; is that right?

A. Yes, sir.

Q. I believe you testified to that, didn't you?

A. Yes, sir.

Q. Then he followed that with this question, "You had no stagger system before May 1, 1941, did you?" and you said, "No."

A. I think that is right.

Q. What did you mean by that?

A. You mean what did I mean by no stagger system?

Q. Yes, sir, in answer to his question.

A. Well, at that time all the men couldn't ride on one man trip, and naturally if there was more than a man trip load up there, somebody had to wait until the next one.

Q. All right. I will ask you another thing. Some of them were not there; some of them came later; you have testified to that?

A. Some of them weren't there to ride the first trip.

Q. And some of them were not there to ride the second one either?

A. I would say the majority of them were there to ride the second trip.

Q. That is not exactly answering my question. I said some of them were not there, and I didn't ask you about the majority?

A. There may be a few straggler not there.

Q. And they took the stragglers down like the others?

A. Oh, yes; they got on the man trip like the others.

Q. Now, Mr. Harris asked you about the maintenance men and if they had any tools to carry down, and your answer was like this, "I have seen them carry a shovel or hammer or something like that."

That is what you testified?

A. Yes, sir.

Q. That was very, very seldom?

A. I can't say it happened—I haven't paid so much attention to it. I haven't noticed it so much because I haven't anything to do with the maintenance men.

Q. You have noticed it a very few times in seven years?

A. I have noticed it a good many times.

Q. A good many times in seven years?

A. Yes, sir.

Q. You have noticed it how many times, would you say, in seven years?

A. I don't know.

Q. Give us your very best idea.

A. I would say I would notice it once a week, something like that. Sometimes it might be a month. I didn't pay no attention to the maintenance men.

Q. You say once or twice a week or two weeks you might probably notice it?

A. Yes, sir.

Q. Or twice a month?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Q. Now, was the powder magazine open in the morning?

Mr. Harris:

He has gone into that. He has stated he didn't know.

Mr. All:

I believe you are right.

The Court:

You have been over that.

Mr. All:

I did that inadvertently.

Q. Now, Mr. Gilbert, Mr. Harris asked you this question, that you were on strictly a tonnage basis with no minimum guarantee up until, I believe he said, 1940. I believe you said 1940, didn't you?

A. I believe that is right, 1940.

Q. Then he said, "Suppose at that time you produced four tons of ore, and how would you be paid?" and you said you would be paid for four tons of ore.

A. That was back before the guarantee taken effect.

Q. That is what I mean?

A. Yes, sir.

Q. How many times would you say you didn't get out but four tons of ore during seven years?

A. Well, I would say that in the seven years, if you are going back that far, there were lots of times I didn't get out four tons.

Q. What were the general nature of the circumstances under which you got out less than 25 or 30 or 40 tons of ore?

A. Probably have a break down or fall.

Q. How often did that happen?

A. It is kind of hard to answer about how often it would happen.

Q. It is very unusual, isn't it?

A. Oh, it is not unusual to have a fall or breakdown.

Q. I am talking about to the extent it would materially decrease your tonnage so you wouldn't get but a few tons of ore?

A. Well, going back seven years, it happened quite often.

Q. Well, how many times would you say in seven years?

A. Oh, I couldn't keep up with it in seven years.

Q. A dozen times?

A. More than that.

Q. Twenty?

A. Seven years, I wouldn't say less than fifty, noway.

Q. In seven years?

A. Yes.

Q. Now, during that time you did some other sort of work, didn't you?

A. Well, I did work—

Q. If you had that sort of a breakdown?

A. You mean I did some other work in there?

Q. Yes.

A. Outside of my place?

Q. You had your day's work somewhere else?

A. Sometimes we stayed in there and helped fix the breakdown and clean up the fall.

Q. Well, you got paid for it?

A. Not then.

Q. Not when?

A. Back in 1934.

Q. Say in 1935?

A. It was later than that before we got any compensation whatever for that kind of work.

Q. Well, when? How far back?

A. I would say it was up near '38.

Q. Mr. Gilbert, what is your average earnings a day now?

A. At present?

Q. Well, during the past three years, four years.

A. I couldn't say back that far.

Q. You make ten or fifteen dollars a day, don't you, ten or twelve dollars a day?

A. Some days less.

Q. Not much less?

A. Yes, a lot of times I have made less.

Q. How much less? I will ask you if your average hasn't been from $12 to $17 net per day?

A. For how long a period?

Q. Well, for the last three or four years?

A. No, sir, I don't think it would that far back.

Q. Well, what about the last year?

A. Well, for the last year it might.

Q. Well, would it for that period?

A. How much did you say?

Q. $12 to $17 a day.

A. I wouldn't say seventeen.

Q. Well, what would you say? I said from twelve to seventeen dollars.

Mr. Harris:

Judge, we object. They no doubt have the records and know what they paid the men. Let the records show what they made.

Mr. Burr:

We want the Court to know it.

The Court:

Let him answer it.

A. Well, maybe some days I made a little more than that, and some days less.

Q. Would you say that much on an average?

A. I couldn't tell you on an average. I could tell you monthly. Some months I make more and some less.

Q. Well, how much do you make a month then on an average?

A. I don't know exactly. I would say around $250 a month for a year, something like that, the past year; somewhere along there.

Q. You have always been a very good producer, haven't you, Mr. Gilbert?

Mr. Harris:

We object; that is immaterial.

Q. I mean by that prior to the time that the minimum was put in, your minimum guarantee was put in? During the time you worked in the same heading with the same number of men and in a great many instances the same men, you produced as much tonnage before the minimum was put in as you did afterwards?

A. No, sir, not always.

Q. I don't mean always. I mean on an average.

A. Sometimes we did. We had longer hours. Sometimes we didn't.

Q. Mr. Gilbert, I don't want to ask you the same question over but I am talking about on the average.

Mr. Harris:

We object, Judge. I think the man is trying to answer his question.

The Court:

Well, he can answer it.

A. Well, speaking for myself, I think the past year and a half or two years I have managed to stay above the guarantee.

Q. Above what? The present guarantee?

A. Not the present; the one—

Q. But prior to the time of the guarantee period, your tonnage was above what the guarantee period became later?

A. Not always.

Q. I mean as often as it has been since, hasn't it?

Mr. Harris:

Well, that question is not intelligible.

Mr. All:

Let's see if the witness understands what I mean.

A. I don't quite understand your question.

Q. Well, we will say this: What is the minimum now,—the minimum now?

A. My minimum now, at the present, is $7.36.

Q. $7.36?

A. That is right.

Q. Where does the guarantee start so far as tonnage is concerned?

A. When does it start?

Q. Yes, what tonnage.

A. Well, the guarantee starts under eighty tons.

Q. Under eighty tons?

A. That is right.

Q. In other words, if you get eighty or under, you get this $7.36?

A. Yes, sir.

Q. If you get over that you get a premium which is added to the $7.36; that is right, isn't it?

A. You get your regular rate of tonnage.

Q. What I am asking you is this: For sevral years prior to the time that minimum was put in, if you and your crew did not average in excess of 80 tons?

A. No.

Q. What did you average?

A. There has been months—In '34, as I was telling you, I went for months I didn't draw a dime.

Q. Went what?

A. Went for months I didn't draw a dime.

Q. What was the matter?

A. Just couldn't make it. That is what I am telling you now,—through breakdowns and falls.

Q. We will take that same period where you have no more breakdowns and no more falls, wouldn't your crew work just as diligently and just as efficiently as it has since 1940 when the minimum was put in?

The Court:
He has answered that.

Mr. All:
Sir?

Mr. Harris:
He has answered it, I understood.

Mr. All:
What did he answer? I don't think he has.

The Court:
Go ahead and answer it.

A. While we were working, certainly they did.

Mr. All:
That is what I mean. I believe that is all, Judge.

Re-Direct Examination.

(By Mr. Harris):

Q. What time did you arrive on top during the period when you reported at the tally house or reported to the foreman around six o'clock? Coming out what time during that period would you arrive on top?

A. I would usually get out anywhere from fifteen to four until four o'clock.

Q. From a quarter of four up to four o'clock?

A. Yes, sir.

Mr. Harris:

That is all.

Mr. All:

That is all.

The Court:

Come down.

(Witness excused.)

The Court:

We will take a recess for a few minutes.

(Thereupon proceedings were in recess from 2:45 to 3:00 P. M., at which time proceedings were resumed as follows:)

The Court:

Who is your next witness?

Mr. Harris:

John Hill.

2853 JOHN HILL, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. Are you John Hill?

A. Yes, sir.

Q. How old are you, Mr. Hill?

A. Thirty-six.

Q. Where were you born?

A. Calera, Alabama.

Q. How high did you go in school?

A. Third grade.

Q. What business do you follow?

A. Electrician.

Q. For what company do you work?

A. Sloss Company.

Q. How long have you been working for the Sloss-Sheffield Steel & Iron Company?

A. Since 1920.

Q. When you first started working for the Sloss Company in 1920, what work did you do?

A. Pumper.

Q. Pumper?

A. Yes, sir.

Q. Was that out on top or down underground?

A. Down underground.

Q. What mine were you pumper in?

A. Number 1.

Q. How far is Number 1 from Number 2?

A. About three quarters of a mile.

Q. Is the situation such now that men working in Number 1 mine go in the mine through Number 2 and then walk over to Number 1?

A. Yes, sir.

Q. What do they use the mouth of Number 1 for, the slope of Number 1?

A. The pumpers go in and out the mouth of Number 1.

Q. When you were a pumper, how far did you work from the mouth of the mine?

A. About three quarters of a mile.

Q. When you finished your tour of duty as a pumper, what was the next job you had?

A. Electrician.

Q. And have you been an electrician for the Sloss Company ever since?

A. Yes, sir.

Q. Does your work as an electrician carry you into a limited part of the mine or all over the mine?

A. All over the mines, practically.

Q. Has that been true ever since you became an electrician for them?

A. Yes, sir.

Q. Are you what is called a service man or a production man?

A. Service.

Q. Service man?

A. Yes, sir.

Q. Now, in your work for the company have you observed the other service men, the timber men and the track men and the maintenance men in and about their work over this period of years?

A. Yes, sir.

Q. Well, has there work carried them in a limited portion of the mine or has it carried them all over the mine?

A. Well, the most of it all over the mines.

Q. Now, Mr. Hill, let's start back when you were a pumper. You were about 15 or 16 years old then?

A. Fifteen.

Q. While you were a pump boy down in this mine, what time did you report to work each morning?

A. Six o'clock.

Q. Was that up on top or down at the pump?

A. Up on top.

Q. How did you get from the top to the pump?

A. Rode a trip.

Q. Then, after you had finished with your pumping on that shift, what time did you get to the top of the mine?

A. Six o'clock.

Q. You mean you were underground twelve hours?

A. Yes, sir; well, from the time I started from the top until I got back was twelve hours.

Q. Were you then working on an eight hour day?

A. No, sir; I was working twelve hours.

Q. And you were getting paid for twelve hours?

A. Yes, sir.

Q. That lasted until you were seventeen years old; is that right?

A. Something like that, yes, sir.

Q. Then, at seventeen when you became an electrician, what time would you get to the mouth of the mine?

A. For a short while I worked outside and inside. The days I had to go inside I reported out there about seven o'clock.

Q. The days you had to go inside what time did you get back out to the top?

A. 4:30.

Q. How many years did that last?

A. Up until 1929.

Q. What change took place in 1929?

A. They went off of ten hours to nine hours somewhere in there. About 1930 they went off—somewhere close—About 1929 or 1930.

Q. Well, when they went on to nine hours in 1929 or '30,—left ten and went to nine, what time did you get to the mouth of the mine and what time did you get back on top?

A. Around six o'clock?

Q. You got there to work in the morning?

A. Yes, sir.

Q. What time did you get back on top?

A. Sometimes 5:30, 6:00 o'clock, 6:30, 7:00 o'clock, somewhere along there.

Q. All right. What was the next difference in your time of reporting and your time of getting out on top?

A. In twenty—in 1934 we went on eight hours.

Q. When you went on eight hours in '34, what time did you report at the mouth of the mine?

A. Somewhere around six o'clock, five or ten minutes after six.

Q. And on that schedule what time did you get out—back on top?

A. From 3:30—along about 3:30 or 4:00 o'clock.

Q. Well, that would be—from six o'clock or a few minutes after to twelve would be six hours, and then to 3:30 or 4:00 would make it nine and a half or ten hours. You mean in 1934 when you were on what is known as an eight hour day, from the time you entered the mine until you got out nine and a half or ten hours had passed?

A. Yes, sir.

Q. But you were paid for what?

A. Eight hours.

Q. For how many years did that way of counting eight hours last?

A. Until 1937, if I don't make no mistake.

Q. In 1937, what change took place?

A. We went to work at six o'clock and fifteen minutes taken away from the lunch period, and made us get off earlier, and the man trip supposed to go on at 3:15, and hoisted out at 3:20.

Q. You would be out on top what time then?

A. About 3:30 on the first man trip.

Q. So you would go there at six and get out at 3:30?

A. Yes, sir, the first trip.

Q. Well, suppose you didn't catch the first man trip.

A. About a quarter of four or four.

Q. Was that still another eight hour day?

A. Yes, sir.

Q. From 1937 on how long did that last?

A. Up until we went on this portal to portal and put in the clock system and all that.

Q. You mean from October—October 24, 1938, on up to May 1, 1941, you have been reporting up there around six o'clock?

A. Yes, sir.

Q. And getting out around 3:30 to a quarter to four, and what were you being paid for, for how many hours?

A. Eight hours.

Q. Well, when you reported as a service man, a company man, during the period from October 24, 1938 to May 1, 1941, did you have anybody to tell you where to go before you went down in the mines?

A. Yes, sir, anything in the way of a breakdown, what the night shift left undone, I was told, and told what materials to carry, or the mechanic would bring it up there for me to carry it down.

Q. Who would tell you that?

A. The mine foreman would usually have a list and would tell me what drag and so on was down.

Q. Well, did he tell you what man trip to ride down into the mine?

A. No, sir.

Q. But as I understand, he would tell you places to go after you got down into the mine, is that it?

A. Yes, sir.

Q. Did you have any orders or directions for him as to what man trip you would catch coming out of the mine during those three years?

A. No, sir.

Q. Well, did you always catch the same man trip coming out?

A. No, sir, not every time.

Q. What would be the occasion for catching a different man trip one time out than another time out?

A. Well, the foreman had a list—all the white fellows that would come up there, he would take their names, and he would let 25 out. If you were not in that number of 25 you would have to wait for the next trip.

Q. I see. Did the foreman count the next twenty-five men for the second trip, or did you have that many white men working there?

A. Didn't have that many.

Q. If you were there, you were certain of catching not later than the second trip coming out?

A. Yes, sir, you would catch around the second trip coming out.

Q. Well, in your work as an electrician, what machines do you work on down underground?

A. All kinds of different ones, traveling motors, drag motors, hoisting engine motors, trolley wires, light wires, cables.

Q. Well, do they have a trolley wire going down the main slope before you get to the man loading station?

A. No, sir.

Q. Where do the trolley wires start after you get in the mine?

A. 79, Number 2.

Q. Those trolley wires furnish the current to pull what motors?

A. The traveling motors, and some of the hoisting motors were on it, and some of the mechanical drags, electrical mechanical loaders.

Q. You have electrical mechanical loaders down there?

A. Yes, sir, all electrical.

Q. How many hoist engines were electrical?

A. They have about twelve, I think, electric hoists.

Q. What kind of hoists are the others?

A. Air hoists.

Q. Compressed air hoists?

A. Yes, sir.

Q. Now, how many electric motors did you have down there?

A. Five.

Q. And did you have—

A. Five electric traveling motors.

Q. Yes. Those were operated from the trolley wires?

A. Yes, sir.

Q. You have more electric hoists to pull the ore up the steep places, and then you have electric motors to pull it on the level places?

A. Yes, sir.

Q. Well, how steep a grade—according to your observation, how steep a grade becomes a limit on an electric motor?

A. I wouldn't say. We have some pretty steep grades the motor comes up.

Q. Well, the hoists—are there some and still steeper grades where you use the hoist?

A. Yes, sir.

Q. How about those grades, how steep are those?

A. Well, I would say about twenty degrees pitch; some of them are steeper than the others. It is not the same.

Q. Well, the trolley wires down throughout this mine, are they protected so there is no danger to the men from the time they start down in the mine or start out of the mine?

A. No, sir.

Q. Have you any idea or judgment as to how many exposed places there are in those trolley wires in this mine?

A. There is, I would say, around 12,000 feet of wire, and there is none of it but about 250 feet that has a sheathe on it.

Q. What do you mean by a sheathe?

A. A ceiling like in a house put on it to protect from anything hitting it, like steel on a man's shoulder. There would be a trough, in that shape (indicating) in a trough.

Q. How much of that wire, about, do you say is protected?

A. About 250 feet.

Q. And 12,000 feet of wire in the mine?

A. Yes, sir.

Q. And all except that 250 feet where a man carrying a quarry bar could hit it is exposed?

A. Yes, sir.

Q. Is that low enough to where it will reach a man, say, five feet ten inches tall carrying a quarry bar?

A. Yes, sir; reach him if he didn't stoop.

Q. How many places in the mine would you say the wire would reach him if he didn't stoop?

A. There are several.

Q. Do you walk in and around about these places where you go to work, or do you always ride?

A. I ride the main trips—I don't ride the motors. I ride the trips.

Q. Do you walk the man ways and haulage ways of the mine?

A. Walk the haulage ways. We don't have any manways except in crossing from Number 1 to Number 2.

Q. How do you find the footage?

A. Rough.

Q. What made it rough?

A. Tracks, falls, moving a track there and leaving a rough place for a man to walk on.

Q. How is the temperature in the mine? Is it the same from the main man loading station on out to the furthermost stope?

A. No, sir.

Q. How does it vary; does it get cooler the further in the mine you got or does it get hotter?

A. Gets hotter.

Q. Does it get better or get worse?

A. Gets worse.

Q. Where would you say you first noticed the odor of human dung after you leave the man loading station?

A. Going in Number 2 I would say from 62 and on.

Q. How long have you been a member of a union out there?

A. Eight years and a little over.

Q. What union do you belong to?

A. Sloss Local 109 or Mine, Mill & Smelter Workers.

Mr. Harris:

Mr. All, have you your original exhibit of the various proposals—

Mr. All:

You mean that we introduced in evidence?

Mr. Harris:

Yes.

Mr. All:

I think we have.

Mr. Harris:

I would like to have, if you don't mind, all the originals that you introduced in evidence on the various proposals.

Mr. All:

Here they are right here.

Q. Now, as a member of the union, have you been merely a member or have you been both a member and an officer?

A. I have been an officer.

Q. What different official positions have you held?

A. I have been president of the local.

Q. What?

A. President of the local.

Q. Now, were you an officer when the man skip was derailed in the mine or were you just merely a member of the union, or was that before the union was organized?

A. What skip are you speaking of, the break loose?

Q. The break loose?

A. That was long before we organized.

Q. Was that a man trip that broke loose?

Mr. All:

We object to that, if the Court please.

The Court:

I don't see the materiality of it.

Mr. Harris:

All right.

Q. In 1934 did you have any dealings or negotiations with any of the officers or representatives of the Sloss-Sheffield Steel & Iron Company?

A. Yes, sir.

Q. You heard this witness, Jess Gaines this morning?

A. Yes, sir.

Q. You have known him how long?

A. All the time.

Q. Were you and Jesse on a committee that talked with Mr. Marshall or Mr. Ben Davis or any other officers along in '34?

A. Yes, sir.

Q. Now, in your first conversation with the officers of the Sloss Company in 1934, did you and they discuss the question of a six hour day?

A. Yes, sir.

Q. Did you discuss the question of being paid for both going in and coming out of the mine?

A. Yes, sir.

Q. Now, at the time you discussed that with them in 1934, had you submitted a written proposal asking for a six hour day, and for pay both ways, or do you know?

A. We had a proposal that we had talked—that we had it in writing. We sat on one side of the table and the company sat on the other side of the table and talked. The company had one. The company held theirs and we held ours, and they were never presented.

Mr. Burr:

What is that?

Mr. Harris:

He said they sat on one side of the table and the company sat on the other side of the table, and they had theirs and the company had theirs and they were never presented.

Q. You mean they were not exchanged?

A. No, sir.

Q. In that conference what was said when you asked for the six hour day and pay both ways?

A. For a number of reasons he said he would not or could not do it; they were a small company and they couldn't be the one to lead out on a proposition like that.

Q. Now, did they have any stenographer taking down what was said at these meetings you had with them?

A. No, sir.

Q. Did the question of having a stenographer ever come up at these meetings you had with them?

A. Yes, sir.

Q. What was said about that?

A. The company said they didn't want and didn't have any one, and they didn't think we should request one either; that the proposals and things they presented, that they presented us, they wanted them back, wanted them destroyed, didn't want them out in the open or nothing like that for everybody else to know their business.

Q. Well, when they handed them to you, did you give them back to them?

A. Yes, sir, some of them, and some of them we destroyed them like they said.

Q. Do you recall how long it was before the Sloss Company ever had a stenographer there to take down the negotiations or discussions?

A. They only had one at a conference we had there in the Sloss office at Bessemer, I know anything about.

Q. When was that?

A. That was in 1934, right after the strike.

Q. They had a stenographer there then?

A. Yes, sir, the company had one.

Q. Well, did they give you a stenographic report of the minutes of that conference?

A. Yes, sir, the action on what he granted,—Mr. Ben Davis did,—he gave us that in writing.

Q. He gave you a stenographic report of what was granted?

A. Yes, sir.

Q. But did he give you a stenographic report of what was said?

A. No, sir.

Q. Then, in 1935,—1934 after this first proposal of six hours and travel both ways, did you make him a proposal of a different nature?

A. Yes, sir.

Q. What was the nature of the next proposal you made?

A. The next proposal we made was with all the ore mines on the mountain together. We made a proposal there.

Q. What was the proposal?

A. Seven hours.

Q. And traveling—

A. Travel time was discussed.

Mr. Harris:

Have you got that proposal, Mr. All?

Mr. All:

Yes, sir. I reckon that is it.

Q. I will ask you to look at Sloss Exhibit Number 1, and see if that appears to you—Take paragraph 8:

"In view of the fact that the company can force the men to enter and leave the mines at any time stated by the company, we ask the right to enter on our own time and leave on the company's time."

A. Yes, sir.

Q. Now, I notice a signature to that, John Hill.

A. Yes, sir.

Q. Is that your signature?

A. Yes, sir.

Q. Does that appear to you to be in the same way you presented it to them?

A. No, sir. There was a whole lot more on it. It was a big form; there was a whole lot more of it.

Q. This has pages numbered 1, 2 and 3. What do you mean by it had a whole lot more on it?

A. There was a big lot of pages. In other words, that signature on there—we are not allowed by the local

to sign one name that way and send it in. The committees have been three and seven. There has never been a one-man committee in our local.

Q. Do you know of any occasion in all your experience with the union of which you are still a member where one man on the committee signed for the whole committee?

A. No, sir.

Q. You say that is your signature on this page which is marked page 3?

A. Yes, sir.

Q. Well, what did they do about that? Did you get your seven hour day and you enter or leave on their time?

A. No, sir.

Q. What was said to you about that? Did you get a reply in writing?

A. No, sir, just the regular thing, about the same statement they had given to the other.

Q. Then, did you make them another proposition?

A. Eight hours was discussed, and asked we go one way on our time, and discuss the eight hours and traveling on the company's time one way.

Q. Were you in the negotiations representing the union when a man named Richardson was here from Washington?

A. Yes, sir.

Q. Did you get a copy of the letter of understanding that the company wrote to Mr. Richardson or to Madame Perkins?

A. To Mr. Richardson or to Madame Perkins one; I don't recall just which.

Q. Well, the company didn't give you a contract at that time, in that year, did they?

A. No, sir.

Q. In 1935 did they give you a contract?

A. No; sir.

Q. When was the first year the Sloss-Sheffield Steel & Iron Company gave you a contract?

A. You mean our local a contract? Sloss Local a contract?

Q. Yes.

A. In '40, I think it was.

Q. 1940?

A. Yes.

Q. What year was it, if any, since 1934, that you have had a strike at the Sloss Company?

A. It was in '34.

Q. How soon after this—these negotiations about hours and traveling time was it that you had the strike?

A. Well, some of it was two or three months before, and some of it was just before the strike.

Q. And when you went back to work—when was it in 1934 you went back to work? I will change the question if you don't know exactly the date. How long did the strike last?

A. Two months.

Q. Well, when you went back to work did you get your seven hour day?

A. No, sir.

Q. Did you get travel time one way?

A. No, sir.

Q. So far as you know, has the Sloss Company ever paid you or ever taken into account in paying you the time consumed in entering and leaving the mine?

A. Since when?

Q. Up to May 1, 1941?

A. Not in the last two or three years, they haven't.

Q. Since October 24, 1938, up to May 1st?

A. No, sir.

Mr. Harris:

You may take him.

Cross Examination

(By Mr. All):

Q. Mr. Hill, you say you have been with the company since 1920?

A. Yes, sir.

Q. You started as pumper?

A. Yes, sir.

Q. And then you became electrician two years later?

A. Yes, sir.

Q. Have you been following the same—electrician's job practically ever since?

A. Yes, sir.

Q. During a part of that time you worked ten hours and sometimes nine hours and sometimes eight hours?

A. Sometimes twelve hours. I started off on twelve hours.

Q. That was for your particular job?

A. Yes, sir.

Q. But they had a ten-hour period there for the miners?

A. Yes, sir.

Q. And then a nine hour period, during which there was a nine hour day?

A. That is right.

Q. And then eight hours?

A. That is right.

Q. And you say your recollection is the eight hour period commenced about 1934?

A. No, sir, somewhere along in 1933, the last of '33.

Q. And after that eight hour period the miners and inside men were paid on the basis of eight hours?

A. Yes, sir.

Q. Now, during that period of time you had the men—the miners at the face,—I mean those on productive work, their work commenced at about seven o'clock?

A. Five to seven, the last one. We had an agreement with the company. The last one was five minutes to seven.

Q. The last one?

A. We had a talk on it. There was a negotiation because all the other men on Red Mountain was out before we got in and the company moved it up to five minutes to seven.

Q. Before that time it was seven?

A. Yes, sir.

Q. When was it changed to five minutes of seven?

A. In—the best I can recollect in '40,—1939.

Q. And that change from the time they were required to put in at the face or their working places at seven was changed to five minutes to seven,—that change was made at the request of the men?

A. At the request of the men.

Q. At the request of the men?

A. Yes, sir.

Q. Now, then, what was the quitting time?

A. 3:10.

Q. 3:10. Now, 3:10 was the hour that the shooting commenced, wasn't it?

A. Yes, sir, after then it was.

Q. After when?

A. After we got the change to the five minutes to seven.

Q. Before you got the change to five minutes of seven when was the shooting time?

A. 3:30.

Q. 3:30. Then you say there was some change made about the lunch period?

A. Yes, sir, for the company men.

Q. You mean by that men similarly situated to you?

A. Yes, sir.

Q. I am talking about the men at the face?

A. No, sir.

Q. The production crews—

A. No, sir, there was no change—

Q. I mean about the five minutes to seven.

A. Yes, sir, they were to go to work at the face at five minutes of seven.

Q. And quit at 3:10?

A. Yes, sir.

Q. And the company men quit at 3:10?

A. Yes, sir.

Q. There was a change in there by giving you a lunch period?

A. Fifteen minutes lunch period.

Q. And that accounts for the difference between 3:10 and 3:30?

A. Yes, sir.

Q. And I—In going down and coming out, Mr. Hill, there was no particular man trip for the particular men to take up to May 1, 1941, was there?

A. Just the first ones there are the first ones coming out.

Q. The first ones there were the first ones out; if you didn't get there to catch the first one, you would catch the second, and if you didn't catch the second one you would catch the third one?

A. Yes, sir.

Q. And that was true of the service men and production men?

A. Coming out.

Q. And there was no particular trip, no staggering of the trips, of the men in the trips going down up until May 1, 1941?

A. If a man didn't catch the last trip they didn't run a special trip. The foreman would tell him to go home and come back the next day and he would miss a shift.

Q. They were not required to get on any particular trip?

A. No, sir, but anybody knew it was going to be crowded. If there was—if it was too crowded, the last ones, they couldn't all get on.

Q. Nobody was required to get on any particular trip?

A. No, sir.

Q. You spoke about trolley wires being protected, that there are trolley wires in the mines exposed for about 12,000 feet?

A. Yes, sir.

Q. And protected for about 200 feet?

A. That is right.

Q. Am I quoting you correctly?

A. That is right.

Q. Whose duty is it to look after those exposed wires to see that they are safe?

A. Well, we did have a safety man. We have no safety man now at the present time. Mr. Jefferson Sides was safety man up until about six or seven months ago.

Q. Regardless of what they called him—

A. He was safety man.

Q. —he was supposed to keep the places safe?

A. To report to the company. The company would get the material and make them safe.

Q. Hasn't that been your job at times?

A. No, sir, not buying the materials.

Q. I mean from the standpoint of looking after the wire?

A. I put up what they bought.

Q. They do have a man to look after that?

A. Yes, sir.

Q. And to see whether the exposed places were safe?

A. Yes, sir.

Q. And as a matter of fact, all upkeep of them?

A. I wouldn't say that was his job, to look after them. He was there to look after anything—he was supposed to be—safety inspector is what he was called.

Q. I mean by that he was looking after the safety of the various parts of the mine?

A. Yes, sir, supposed to be.

Q. That is what his duty was, wasn't it?

A. Yes, sir.

Q. Now, you said something about there being some places in the mine, talked about these wires where the men would have to stoop down?

A. Yes, sir.

Q. Now, can you tell us how many places of that sort there were in the mines?

A. You mean where a man has to stoop in the mines?

Q. To avoid the trolley wire?

A. All the way from 79 to the turn to go down in second right it is low, and then you go a piece—

Q. You mean all the way?

A. All the way.

Q. From where?

A. From 79 nuck with the exception of about a 200 foot space.

Q. You mean you have got to stoop going all that way?

A. Yes, if you are toting anything.

Q. I am not talking about where you are toting anything.

A. No, I don't have to stoop only where you go under the trolley. The trolley runs one side of the track.

Q. How many places do you have to stoop?

A. You have to cross under the trolley wire three times in 79.

Q. What distance do you have to walk as you cross under it each time?

A. There are two double trolley wires there, side tracks. You have to walk and stoop and stay out of the way about a hundred feet.

Q. That is the first one?

A. Yes, sir.

Q. Now, Mr. Hill, what do you mean by a hundred feet? I will ask you to point out something in here about a hundred feet. I believe you said a hundred feet.

The Court:
Did you say three hundred feet?

The Witness:
No, sir, one hundred feet.

Mr. All:
He said 100 feet.

A. Oh, it would be from the corner of that building to that corner over there.

Q. That—you mean diagonally across this Court Room?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Where is the second one? You said there were three.

A. Turning off 79 and going into 80 there is another place as you turn to go off in there.

Q. All right. Do you have to stoop if you are not toting anything?

A. Yes, sir.

Q. How far do you have to walk stooped?

A. Just a short—you don't have to stoop but for about five or six feet.

Q. About three steps?

A. Yes, sir.

Q. What about the third place?

A. It is at the second right in 80.

Q. All right. For what distance do you have to stoop there?

A. Well, I would say the way it comes in there a man would have to stoop there for about 20 or 30 feet.

Q. About 20 or 30 feet?

A. Yes, sir.

Q. Of course, all the men in the mine don't have occasion to go by all those places?

A. No, sir. There are part of the men that go that way. That is the Number 2 side of the mine. Most all of them go that way that work on the Number 2 side of the mine.

Q. Those are the places you had reference to talking to Mr. Harris, and those are the places in the mine where you say the trolley wires are low enough for a man to have to stoop?

A. He has to stoop all the way. Mr. Harris asked me how far it was not sheathed and I answered him about 200 or 250 feet out of the 12,000 feet.

Q. Well, you answered all the places where a man would have to stoop in the mine?

A. In the Number 2 side.

The Court:

Not in all the mine?

The Witness:

Just the Number 2 side.

Q. I understood you to make your answer to all the mine.

The Court:

What is that?

Mr. All:

I understood Mr. Harris asked him to name the places in all the mine.

The Court:

Not all the mines?

Mr. All:

No, sir, in this mine.

The Court:

All right. That is what he said.

A. In Number 1 mine there are—

Q. In Number 1 mine?

A. Yes, sir.

Q. You have named the places in Number 2 mine?

A. Yes, sir.

Q Number 2 is operating now?

A. Number 1 is operating too.

Q. How many places in Number 1 mine?

A. I would say about three.

Q. Where are they?

A. In 87, down in the straight there would be about 100 feet down there where a man would have to stoop.

Q. How far would he have to stoop?

A. I would say the way it is now there he would have to go 100 or 150 feet to dodge the trolley wire.

Q. If he was not toting anything?

A. Yes, sir.

Q. Where is the other place?

A. I don't know the number of the place. It is on the track—it is on the straight up there.

Q. Can you tell us the place? Can you describe the place?

A. It is 89 or 88 where the place is. I am not positive of the number of the place.

Q. And you say you have been going all through that mine for quite a number of years?

A. Ever since electrical equipment has been put in the mine.

The Court:

How far do you have to walk stooped right under that last place you have described?

The Witness:

Just across one track.

Q. Mr. Hill, how tall are you?

A. Six feet.

Q. How many accidents from contact with electric wires in there have you seen since 1934, we will say?

A. Well, I haven't seen anybody hauled out or anything like that. I have seen a man get knocked down with a trolley wire several different times.

Q. Well, how many in the last ten years?

A. Well, I would be scared to say. I think I have saw as many as ten or fifteen men knocked down hitting it at different times.

Q. In the last ten years?

A. In the last ten years.

Q. How long—did they quit work?

A. For a while.

Q. What do you mean by a while?

A. Sit down and kind of get over the jolt.

Q. You mean for a few minutes?

A. Yes, sir.

Q. Well, those wires can be seen if a man is looking out for them, can't they?

A. Yes, sir, they can be seen.

Q. They can be seen and they have got safety rules that require the men to look out for things of that sort?

A. No, I don't know whether they have been told to look out for it or not. I usually look out when I gets up there in there. The rest of the time—

Q. You haven't run into them; have you?

A. No, sir. I have gotten into them.

Q. I know, in your work, but you haven't run into them otherwise?

A. No, sir.

Q. And you are over six feet tall?

The Court:
He didn't say that. He said six feet.

Mr. All:
I didn't get that, Judge. I don't see it makes any difference. He is above the average height.

The Court:
Well, he said six feet.

Mr. All:
I don't make any point on it.

The Court:
There is no point with me. You should accept his answers if you are going to ask him specific questions.
Is there anything else?

Q. Now, Mr. Hill, you have said, I believe, that in 1934, in the early part of 1934, that your committee met with some of the representatives of the company and made a proposal for a six hour day and for payment for travel time both ways?

A. I won't say that was in 1934. It was sometime in the last of 1933 or '34, somewhere close in there when the year was out. I will not say what date it was.

Q. How long was that after your union was organized?

A. A short time, a month or two.

Q. Do you remember about when your union was organized, your local was organized?

A. Sometime in the summer of 1933, sometime along in July, I think. I will not say exactly. Sometime in the summer of 1933.

Q. How long after that negotiation took place before you made the proposal for the day to be a seven hour day and for the men to come in and out on the company's time?

A. It wasn't so long.

Q. Well, how many days or weeks or months?

A. Four or five months.

Q. Who was present, you say, at the time you discussed the six hour day with the representatives of the company?

A. Mr. Marshall and Mr. Davis.

Q. And who of your local, members of the union?

A. Myself, O'Neal, Jesse Gaines, Martin Walker, Will Boyd, Walter Gilbert and Tony Cosper.

Q. Now, were you going as members of the union?

A. No, sir.

Q. Who did you go there representing?

A. The Sloss employees.

Q. The Sloss employees that first time?

A. All the time up until 1940.

Q. All the time up until 1940?

A. Yes, sir.

Q. Before going did this committee prepare a written six hour day proposal with traveling time both ways?

A. They had it written out.

Q. Did you have it typewritten or was it written in pen and ink?

A. Typewritten.

Q. Did you keep it or destroy it?

A. We destroyed it.

Q. When did you destroy it?

A. As soon as we got the one the company presented to us.

Q. Did you accept the one in 1913—I mean in 1933?

A. No, sir. I am speaking of the letter of understanding with Mr. Richardson,—with Mrs. Perkins.

Q. You kept that first six hour proposal until Sloss wrote the letter to Mr. Richardson?

A. Until we got that.

Q. Until you got that?

A. Yes, sir.

Q. In the meantime you had made the seven hour proposal?

A. The seven hour proposal and the check off and the traveling time was what the first strike was about.

Q. Well, who prepared that paper?

A. I can't recall; myself and different officers of the locals on Red Mountain.

Q. You mean all the locals on Red Mountain?

A. It was a uniform agreement we proposed to all the companies.

Q. You proposed it to all four companies, didn't you?

A. Yes, sir.

Q. It was all typewritten, wasn't it?

A. All seven officers. I think there were seven officers signed to it from Red Mountain.

Q. It was a typewritten paper?

A. Yes, sir.

Q. Or a carbon copy of the other one?

A. Yes, sir.

Q. It was the same typewritten document?

A. The same thing.

Q. For each company?

A. Yes, sir.

Q. Were you present when that was prepared?

A. Most of the time, yes, sir.

Q. Were you present when it was written or dictated or composed?

A. Part of the time I was and part of the time I wasn't.

Q. Who was responsible—who was the real draftsman?

A. Well, the financial secretaries of the different locals.

Q. Who proposed the language?

A. All of us proposed it, all of us together. We met in the C. I. O.—A. F. of L. it was at that time—A. F. of L. council hall at Bessemer and prepared it.

Q. Was it dictated or written out in longhand first?

A. Written out in longhand.

Q. Who wrote it out in longhand?

A. I think Mr. Smith and some of the financial secretaries of our locals got together and got it typewritten. I don't know who typed it after they got it in longhand.

Q. You say there were several pages?

A. Yes, sir, thick.

Q. How many pages would you say there was?

A. It was a pretty thick proposal.

Q. How many pages would you say there was of it?

A. There were ten or twelve pages of it.

Q. Mr. Hill, I show you Sloss Exhibit Number 1. Do you understand? This is addressed in the original to Sloss—it is addressed in blank and finally written out in the original to Sloss. It consists of 22 pages, followed by this sentence:

"Respectfully submitted" and "In Witness Whereof we hereunto subscribe our names as the chosen representatives of more than ninety percent of your employees," with "John Hill" on it.

Read that and tell me what was left out of there that was put in there.

A. That would be a little hard to do.

Mr. Harris:

Mr. Hill, if it is agreeable to Mr. All, suppose you start with the first paragraph and read it aloud to the Court.

The Witness:

I would have to read too slow. I don't remember this at all. The company said they would destroy the one they had and we would destroy ours. I don't know how they got this. I never signed my name by somebody.

Q. What is in—

A. There is some things here that was in the proposal.

Q. What were some of the things that was in the proposal that is not there?

Mr. Harris:

I have my doubt of the witness' ability to read. I want him to read it to the Court. He went to the third grade in school.

Suppose you start at the start and read it to the Court.

Mr. All:

May it please the Court, I would like to examine the witness. I don't think the statement he only went to the third grade in the school—

The Witness:

I can read it, but it will take me some time to spell it out.

Mr. Harris:

The way the questions were framed, I don't know whether the witness understood—

The Court:

He was asked if there was anything in the proposal that was not in there.

The Witness:

The guarantee on here don't check with the one we gave to the company.

Q. You say that is not the instrument you gave to the company?

A. No, sir, not with my name on it.

Q. That is not your signature?

A. Yes, it is my signature.

Q. Well, how many pages were on it when you signed it?

A. There were several of them on here.

Q. What was the last numbered page?

A. I would say it run along about 10 or 12.

Q. Now, look here, Mr. Hill: This instrument has got three pages. One, two,—this is two, and it is numbered two, and at the end of page two there is nineteen, see, and there is a broken sentence there with the word "straighten" and "out" on the other page; page three, and at the end of that there is a "Respectfully submitted" and your name signed to it.

A. I don't know—

Q. You signed that, didn't you?

A. Yes, sir, that is my signature.

The Court:

All right; we have been over that.

Q. You still say that isn't the paper that was submitted?

A. No, sir; I can't say it is the paper that was submitted.

Q. Can you say it wasn't?

A. There is some of it in there we asked from the company. I know that. There is some in there we didn't.

Q. Well, are you willing to testify that is not all of it?

A. Yes, sir, we will.

Q. Compare these two now. Here is—So you will understand this, here is Bessemer, Alabama, April 13th, just like that. This is Tennessee Company's Exhibit 6. Tennessee Company written into it with three pages signed by these gentlemen.

A. It is signed too.

Q. Yes, but there is only three pages, and read it and see if it isn't exactly the same as that one.

Well, Mr. Hill, without putting you to the trouble of reading them, you know that the same thing was handed to all four companies, don't you?

A. Yes. That is the same thing.

Q. The same thing?

A. Yes, sir.

Q. Well, when you said that the company signed no contract with the union until 1938,—until 1940, what did you mean?

A. I mean recognizing us as the Sloss Local 109 of the Mine, Mill & Smelter Workers.

Q. You didn't mean—you remember these contracts of 1937 and 1938,—1936, 1937 and 1938 where you signed as the committee—

A. Sloss employees.

Q. As employee representatives over here?

A. Yes, sir.

Q. That is your signature there, is it not?

A. Yes, sir.

Q. In 1938?

A. Yes, sir.

Q. And that is your signature on that one, isn't it?

A. Yes, sir.

Q. You mean it didn't have the union itself as a party instead of these employee representatives; is that what you meant?

A. The company recognized us as employees.

Q. The parties made the contracts; you made the contracts?

Mr. Harris:

I think that is a legal conclusion.

The Court:

Sustained.

Q. You were one of the negotiating committee each time?

A. Yes, sir.

Q. All the way through?

A. Yes, sir.

Q. And a great many others at the same time?

A. Yes, sir.

Q. Who appointed you as an employee representative to negotiate the contracts; your local?

Mr. Harris:

We object to that.

The Court:

Overruled.

A. I was asked by the local. The company appointed me as their employee, the way that come about. That is the only way you can get it.

Q. Who selected you to negotiate the contract with the company? Didn't your local vote on it and select you?

A. Yes, sir, I was asked by the local to negotiate an agreement with the company.

Q. The local voted on it and elected you as a committee?

A. I was president of the local. Naturally I was elected.

Q. The others were elected, the other members of the committee?

A. No, sir, the other members at that time were appointed.

Q. You appointed them as president?

A. Yes, sir.

Q. To serve on the committee?

A. Yes, sir.

Mr. All:

That is all.

Re-Direct Examination.

(By Mr. Harris):

Q. Did your union go by the name of employee representatives?

A. No, sir.

Q. Did you have any stationery, "Employee Representatives, John Hill, President."

A. No, sir.

Q. Did you suggest to the company you were employees' representatives, or did the company tell you they would deal with you as employees' representatives?

A. That is the only way the company would deal.

Q. How long was it after you started trying to organize the union before you got a contract that recognized you as a union?

A. 1940.

Q. That is, your local?

A. Yes, sir.

Q. I show you a book. It has got on it Sloss-Sheffield Steel & Iron Company, 1937.

Did the company ever give you a book of rules like that?

A. Yes, sir.

Q. They gave it to every man when they hired him or gave it to him later?

A. No, sir; they gave it to him at the office. Some of them have been out there a long time. They gave out some here not long ago from the office.

Q. Do you know whether or not the 1937 book of rules is the book in force?

A. I haven't seen any since.

Q. You haven't seen any later one?

A. No, sir.

Mr. Harris:

We offer in evidence, if the Court pleases, page 30 of the Book of Rules under the heading, "Rules for Handling Man Trips."

The Court:

Page what?

Mr. Harris:

Page 30.

The Clerk:

That will be defendants' Exhibit 20.

Mr. Harris:

And also the first—

Mr. All:

What rule is that?

Mr. Harris:

Those rules—paragraphs numbered 1 to 12, the first ten on page 30, and 11 and 12 on page 31 under the general heading, "Rules for handling man trips."

(Thereupon Rules 1 to 12, pages 30 and 31 of the Rule Book of the Sloss-Sheffield Steel & Iron Company for 1937, were marked Defendants' Exhibit No. 20.)

Q. Mr. Hill, how much voltage is there in those electric wires?

A. 275.

Mr. Harris:

That is all.

The Court:
All right.

Mr. All:
That is all.

(Witness excused.)

The Court:
Who will you have?

Mr. Harris:
I can probably take a short witness, if the Court pleases.

The Court:
All right.

Mr. Harris:
Mr. Elmer Thompson.

2891 ELMER ELLIS THOMPSON, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By the Court):
Q. Your name is Elmer Thompson?
A. Yes, sir.

(By Mr. Harris):
Q. What is your full name?
A. Elmer Ellis Thompson.
Q. How old are you, Mr. Thompson?
A. Thirty.
Q Thirty what?

A. Thirty.

Q. Where do you work?

A. I work at Sloss ore mines.

Q. What kind of work do you do?

A. I run a hoist engine.

Q. How long have you been working for the Sloss Company?

A. Since February of 1937.

Q. What work have you done for the Sloss Company?

A. I first run an electric locomotive, and then I run what was called 79 engine, and at the present I run what is called 55 engine.

Q. Was 79 engine and 55 engine hoist engines or electric locomotives?

A. They are hoist engines.

Q. Now, are you what is known as a company man or production man?

A. I am a company man.

Q. In 1938, up through May 1, 1941, what time did you report at the mouth of the mine?

A. I reported around five o'clock.

Q. What shift were you working on?

A. Night shift.

Q. And have you worked on the night shift all the time?

A. Yes, sir.

Q. You reported at the mouth of the mine around five o'clock in the afternoon?

A. Yes, sir.

Q. Well, what time would they start underground with you?

A. We started underground at 5:15.

Q. On the night shift—

A. Yes, sir.

Q. —did you ride the man trip out that the day shift did?

A. Yes, sir.

Q. The same man cars?

A. The same man cars.

Q. On the night shift, did you have anything to do with telling the operatives of the man trips when to start or when to stop or anything about it?

A. No, sir, I didn't.

Q. All right. When you reported at that time what time would you be back out on top at the end of your shift?

A. It was usually from twenty minutes until three until three o'clock.

Q. How many hours were you being paid for during that time, from October, '38, to May 1, 1941?

A. Well, a part of that time I was paid for eight hours. That was when I was running the 79 engine up until April 1 of '40. And from April 1 of '40 they started paying me two hours extra a week—paid me 42 hours a week.

Q. What did you do during the time that you were paid extra?

A. I was supposed to have cleared up the main yard of a trip of empties, where they put a trip of empties in, I dropped a trip of empties back on the load track so they could have an extra trip and could pick up the man trip.

Q. While you were switching those empties around, did it delay getting the men out of the mine or did it speed up getting the men out of the mine?

A. Well, it was supposed to have been put in there where they could pick up the man trip on time.

Q. And how many minutes did you ordinarily spend in that after April, 1940?

A. Well, I would spend around 15 minutes doing that.

Q. Well, now, did you—while you were working on the big engine did you haul ore from—to the mouth of the mine?

A. No, sir.

Q. Did you haul ore at any place in the mine—from any place in the mine to a pocket or tipple down underneath?

A. On 55 engine I hauled ore from what is called 74 yard to 48 yard.

Q. How long a haul is that?

A. Well, the total haulage, I imagine, is 23 or 24 hundred feet.

Q. Then did there come a time when, in addition to hauling ore that twenty-three or twenty-four hundred feet that you hauled men that distance?

A. The way the engine is situated, since October of '40, —the engine sets up on the hill—it is around six or seven hundred feet from 48 yard, and the men walk up this hill and load up on the man trip up there within two hundred feet of the engine, and then I haul them down the rest of the distance to 74 yard.

Q. Now, when they got up there—did they have any regular time to get there?

A. Just as quick as they could get off the trip from the top and walk up this hill and get on.

Q. All right. Suppose you had ore to haul, did you stop hauling ore to haul the men, or did the men wait for you to get through hauling ore to haul them?

A. In the evening the man trip was already on the siding, and I had to haul men as quick as I got down there. In the morning we had to quit hauling ore to pull the men out.

Q. Did you quit hauling the ore so the men were not delayed, or did they have to wait?

A. Had to wait.

Q. How long did they have to wait?

A. I have known them to wait for 20 or 25 minutes.

Q. You were hauling ore?

A. Yes, sir.

Q. You got paid for that time for hauling ore?

A. Yes, sir.

Q. Did you ever hear of those men getting paid for that time they were sitting around while you were hauling ore?

Mr. All:
We object to that; argumentative and facetious.

The Court:
Overruled.

A. No, sir, I never heard of them getting paid.

Mr. Harris:
You can take him.

Cross Examination.

(By Mr. All):
Q. You hauled men—
A. Yes, sir.
Q. —and that was part of your job?
A. Yes, sir.
Q. You operated the engine to haul the men on the man trip?
A. Yes, sir.
Q. And you operated the engine to pull the ore skip?
A. The ore trips.
Q. The ore trips?
A. Yes, sir.
Q. The Sloss Company didn't use the ore skip to haul the men, did they?
A. No, sir; they used a special man trip.
Q. Special man trip?
A. Yes, sir.
Q. So you worked there—you started at the top,—you were working on top?

A. No, sir, I worked underground.

Q. I am talking about when you started hauling the men down? Where do you start hauling them?

A. I start hauling them from my engine.

Q. I know, but you start from hauling the men down—you are hauling the men down while they are riding down?

A. I operate the engine while they are being hauled.

Q. Did you ever operate the man haulage from the top of the mine?

A. No, sir.

Q. I misunderstood. Your work has been on this second interval in the mine where men are hauled?

A. Yes, sir.

Q. And you operate the man trip, and when you get through with that you are working hauling ore?

A. Yes, sir.

Q. And that man trip starts to operate at what time?

A. You mean the second man trip?

Q. Yes.

A. It would take—

Q. When did they start operating that second man trip?

A. You mean what time of the year?

Q. Yes, when did they commence it?

A. They started in October of 1940.

Q. They started in October of 1940?

A. Yes, sir.

Q. So that is when this job of yours started?

A. Of operating the man trip, yes.

Mr. All:

I believe that is all, Mr. Thompson.

Mr. Harris:

That is all, Mr. Thompson.

The Court:
You are excused.

(Witness excused.)

The Court:
Court is adjourned until 9:30 tomorrow morning.

(Whereupon, at 4:15 P. M., July 28, 1941, an adjournment was had to 9:30 A. M., July 29, 1941.)

July 29, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:
All right, gentlemen, you may proceed.

Mr. Harris:
Call Mr. Parker.

2898 FRANK PARKER, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

The Court:
What are your initials?

The Witness:
Frank Parker.

(By Mr. Harris):
Q. How old are you, Mr. Parker?
A. Thirty-four.
Q. Where were you born?

A. Kilgore, Alabama.

Q. Where do you work?

A. Ruffner Mine, Sloss-Sheffield Steel & Iron Company.

Q. How long have you been working at Ruffner Mine?

A. Almost two years.

Q. When did the Ruffner Mine start actual production of ore the last time?

A. July 1, 1940.

Q. What work did you do out there before it started production of ore on July 1, 1940?

A. Carpenter work.

Q. In your carpenter work were you working both inside and outside the mine?

A. Yes, sir.

Q. Did you have occasion to see the conditions on or about July 1, 1940, when they started producing ore?

A. Yes, sir. I don't go in after July 1st.

Q. I said on or about July 1st when they started producing.

A. Yes, sir.

Q. What was the condition of the mine with reference to water or dragging the ore through the water at Ruffner?

A. Well, they had to drag the ore—

Mr. All:

We object, illegal, irrelevant, incompetent and immaterial; not sufficiently restricted as to what would be pertinent in this case.

The Court:

Yes.

Mr. Harris:

Well, they started operating July 1, 1940, and I asked him about July 1, 1940, when they opened it up.

Mr. All:
Well, he said—

Mr. Harris:
I will change it.

Q. On July 1, 1940, when they started operating the mine, what was the condition of the mine with reference to water?
A. It was still in the mine.
Q. Whereabouts?
A. Different places.
Q. Since July 1, 1940, when they started producing ore, what work have you done out there?
A. Lamp house.

The Court:
What?

The Witness:
Lamp house man.

The Court:
Lamp house man?

The Witness:
Yes, sir.

Q. We don't know what a lamp house man is, Mr. Parker. Will you tell us?
A. Well, my job is to give the lamps out to the miners.
Q. What kind of lamps?
A. Battery lamps.
Q. Do the Sloss mines furnish the battery lamps to the miners?
A. They do, but they charge them for them.

Q. Do they furnish lamps to the production men and service men both?

A. I didn't understand you.

Q. There was a lot of coughing. Do they furnish lamps to the production men and service men both?

A. Yes, sir.

Q. What time do you go to the lamp house?

A. Before May 1st, I went at six o'clock.

Q. Did you start issuing lamps at that time?

A. Yes, sir.

Q. What time did you finish?

A. By 6:30.

Q. How many mine trips did they run out there?

A. Two.

Q. What time did the first go in?

A. Six o'clock.

Q. What time did the second go in?

A. Beg your pardon,—6:30.

Q. The first one went in at 6:30?

A. Yes, sir.

Q. What time did the second one go in?

A. 6:15.

Q. 6:15, the second one?

A. I beg your pardon,—15 minutes to 7:00.

Q. What are these lamps you furnished to the men? Are they mine lamps?

A. Battery lamps.

Q. What do they weigh?

A. I judge about six or eight pounds.

Q. How do they carry the lamps?

A. On their caps, and they have about a two-inch belt and two hooks and the battery slips down there.

Q. When you were working there before May 1, 1941, did you stay to take up the lamps?

A. No, sir. I quit at 2:30.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr. All):

Q. These miners use the battery lamps instead of the carbide lamps?

A. Yes, sir.

Q. And whatever it weighed, they carried the battery with them?

A. That is right.

Q. They were just in lieu of carbide lamps?

A. Yes, sir.

Q. They wore the lamps on their hats?

A. Yes, sir.

Q. You say you haven't been working in the mines since July 1, 1940?

A. No, sir.

Mr. All:

That is all.

(Witness excused.)

Mr. Harris:

Call Mr. Horsley.

2902 ERNEST HOUSTON HORSLEY, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. How old are you, Mr. Horsley?

A. Thirty-one.

Q. Where were you born?

A. Near Oneonta.

Q. What business do you follow?
A. Driller.
Q. What kind of driller and what kind of mine?
A. In the ore mine, Ruffner Mine.
Q. Of the Sloss Company?
A. Yes, sir.
Q. How long have you been a driller for them?
A. Ever since about the 15th of last September.
Q. Is the driller the same as a head miner?
A. Yes, sir, up there it is.
Q. You don't call them head miners at Ruffner?
A. Call them drillers, because the drill man, he is responsible for his place.
Q. Now, from September 15, 1940, until May 1, 1941, did you continue to work there as a driller?
A. Yes, sir.
Q. How many men did you have in your crew?
A. Well, when I first started I had two muckers and myself.
Q. Well, then, did your crew change?
A. Later on they gave me another mucker.
Q. And do you work with a mechanical loader or fist mucking at your place?
A. Fist mucking at the present time. I worked on the mechanical loader just a few days,—not very long.
Q. And your drill crew was just four men?
A. Yes, sir.
Q. Up to May 1st?
A. No, sir.
Q. Never more than four men?
A. Including myself.
Q. Yes, sir. Now, from September, '40, to May 1, 1941, what time did you report at the change house?
A. Around six o'clock.
Q. Did the Sloss Company furnish you a bath house free of charge out there?
A. No, sir. They charged us.

Q. Well, what did they charge you for the use of the bath house?

A. Forty cents a month.

Q. Well, after you dressed and put on your work clothes in the bath house, where did you go?

A. I went to the supply room, blacksmith shop on the hill about—

Q. Is that near the mouth of the mine?

A. Well, it is about halfway from the mouth of the mine to the bath house.

Q. Well, when you got up there, did you hand in a brass check to anybody?

A. No, sir, I did not.

Q. Did you report to anybody you were there?

A. No more than any supplies there I used.

Q. How did you know what time to be up at the mouth of the mine?

A. Well, when I went there I didn't know anything about the condition of the mine, and Mr. Ellard told me to always report about six o'clock so I could get the supplies.

Q. Who is Mr. Ellard?

A. Mr. Claud Ellard. He was superintendent at that time.

Q. Did the men in your crew report at six o'clock?

A. Usually about six o'clock.

Q. Did they change their clothes at the bath house?

A. Yes, sir.

Q. How did you get in the mine at Ruffner?

A. On a man trip.

Q. What time did the man trip go down?

A. 6:30, the first one.

Q. Do you know Mr. Parker?

A. Yes, sir.

Q. Did Mr. Parker issue you battery lamps out there?

A. Yes, sir, he did.

Q. He would issue them to you in the morning when you went in—.

A. Well, we got our lamps at the bath house. The bath house and light house was combined.

Q. Was Mr. Parker there when you came off your shift?

A. No, sir, he wasn't there.

Q. He got off at 2:30. What time did you get out at the end of your shift and turn in your battery light?

A. Yes, sir; it was around four o'clock.

Q. Is that since—That is during the period from September up to May 1st?

A. Yes, sir.

Q. Now, up to May 1st did they have any electric clocks or any other clocks you punched to show when you went on and came off?

A. No, sir, they did not.

Q. Have they got it now?

A. Yes, sir, they have.

Q. As you went down in the mine did you carry any tools of any sort with you?

A. Well, we carried our bits and fuses and dynamite caps and things of that kind we had to work with during the day.

Q. Did you, as drill man, have to pay for your fuses, dynamite and dynamite caps, picks and shovels, shovel handles, pick handles, and things you wore out when you needed a new one?

A. No, we didn't have to pay for anything except our lights and bath house.

Q. That is all you had to pay for at Ruffner?

A. Yes, sir.

Q. What is the length of time it takes you to go, at Ruffner, from the mouth of the mine to the man unloading station?

A. Well, it would take about five minutes, I guess, to go down, and we had to walk part of the way.

Q. How did you go down? Did you have these cars with seats on them so that ten men rode on them facing out like they did at Sloss Number 2?

A. No, sir. Up here we have the plain cars they ride in. I imagine they are about eight feet over all.

Q. You mean a tram car?

A. Yes, sir.

Q. Does that tram car have any seats in it for the men to rest on?

A. No, sir, don't have.

Q. Is it a tram car used to haul ore out of the mine?

A. Yes, sir.

Q. Is that ore out there wet or muddy or dry?

A. Part of it is wet and part dry.

Q. What is the condition of the tram cars when you get in them in the morning to go down?

A. Well, they are sometimes wet and sometimes dry.

Q. How many men ride in those tram cars?

A. Six.

Q. And how many cars to a trip?

A. Eight.

Q. Did they use that before May 1st?

A. Yes, sir.

Q. After you get off the tram cars, how far do you have to walk to get to your drilling place?

A. Well, I was the furtherest down. At that time I imagine it was seven or eight hundred feet. I wouldn't be positive.

Q. Is that a new working or an old working that has been reopened?

A. It is an old place that has been reopened up.

Q. In going from the man unloading station to your drilling place do you walk standing up straight?

A. Not all the way down. There are a few places you can stand up straight.

Q. How is the footing? It is uphill or downhill?

A. It is pretty steep.

Q. How is it with respect to smoothness or roughness?

A. I wouldn't say it is smooth. It is pretty rough and slippery down there.

Q. How is it with respect to moisture?

A. It is pretty wet where I have to walk to my place.

Q. Do they have any pumps there to pump the water out?

A. Down on the bottom below where I work they have a large pump there to pump the water out.

Q. During this time from September, 1940, up to May 1, 1941, were you paid on a tonnage basis or a time basis?

A. Well, we were paid by the hour.

Q. And you went in there at six and got out at what time?

A. We usually left the top about 6:30 on the man trip.

Q. Yes, sir, and you got out at what time?

A. It was around four, sometimes afterwards.

Q. And your many hours did you get paid for?

A. Eight hours.

Q. Was that true all the way up to May 1st?

A. Yes, sir.

Mr. Harris:

You can take him.

The Court:

I want to ask him one question.

Mr. All:

All right, Judge.

The Court:

Was this supply house right at the mouth of the mine?

The Witness:
No, sir. It was about 400 or maybe 450 feet from the mouth of the mine.

The Court:
What kind of building—was there a building at the mouth of the mine called the tally house?

The Witness:
No, sir.

The Court:
Where did you check in?

The Witness:
We always got our supplies at the blacksmith shop and supply house. That is all combined. We got our supplies and walked on over there.

The Court:
I didn't understand you.

The Witness:
We got our supplies at the blacksmith shop and supply house, which was all combined. We got our supplies and walked over to the mouth of the mine.

(By Mr. Harris):
Q. Did anybody come through the mine to take your time?
A. Yes, sir. Mr. Smith was the bank boss. He would come through.
Q. Did he come to take your time at the end of the shift?
A. No, sir, he wasn't hardly ever there at the end of the day.

Q. Did he take your time before the day was over?

A. Yes, sir, I suppose he did. I never did see him take up any.

Q. When you got out of the mine at the end of the shift, did anybody take your time?

A. No, sir. We went on to the bath house and turned in our lights.

Q. Were they working at that time five days a week?

A. Yes, sir. Sometimes they would have other work to do on Saturday.

Q. But they were working five days a week?

A. Yes, sir.

Mr. Harris:

That is all.

Cross Examination.

(By Mr. All):

Q. Your work, speaking in mining language, was at the face?

A. Yes, sir.

Q. And you got paid at that time for eight hours?

A. Yes, sir.

Q. You gave eight hours work for eight hours pay, eight hours at the face?

Mr. Lipscomb:

We object to that. That is what the Court is to decide.

Q. Were you paid for eight hours at the face?

A. Yes, sir, I was supposed to work eight hours at the face.

Q. These bits you were talking about, were they detachable bits, drills?

A. Yes, sir, detachable bits.

Q. How many did you take?

A. Five.
Q. In a bunch?
A. Yes, sir.
Q. How large were they?
A. The largest one was about two and a half and the smallest—
Q. What do you mean by two and a half?
A. Across; we used the four cornered bits out there.
Q. Carried them in your pockets?
A. No, sir, have a wire to string them on.
Q. A wire?
A. Yes, sir.
Q. Take the dynamite caps and fuses, which you say is—
A. Yes, sir, the caps and fuses.
Q. —what you took in the mine with you?
A. Yes, sir.
Q. That is the supplies you got?
A. Yes, sir.

Mr. All:
That is all.

The Court:
Come down.

(Witness excused.)

Mr. Harris:
I believe that is all with reference to the Sloss Mines at this particular time.

If that is agreeable with the Court, I will let Mr. Cooper put on a little evidence for a few minutes.

The Court:
Yes, sir.

Mr. Cooper:
Come around, Mr. Wheeler, please.

2911 GEORGE S. WHEELER, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Cooper):
Q. How old are you, Mr. Wheeler?
A. Thirty-three.
Q. Where were you born?
A. Tacoma, Washington.
Q. By whom are you employed?
A. United States Department of Labor, Wage and Hour Division.
Q. Mr. Wheeler, have you ever visited any of the ore mines in the Birmingham Region, especially those operated by the T. C. I., Republic Steel Corporation and the Sloss-Sheffield Steel & Iron Company?
A. Yes, sir.
Q. When did you do that and which mines did you visit?
A. I visited the Sloss Number 2 mine on July 9, 1941; the Number 4 Mine, Muscoda, T. C. I., July 10th; Number 6—

The Court:
I thought you asked him just about the Sloss Company.

Mr. Cooper:
No, sir, I asked him whether he went into the mines of either the T. C. I., Republic or Sloss.

The Court:
All right.

Q. Have you finished enumerating the mines?

A. No, sir.

Q. Just finish enumerating them.

A. Yes. Number 6 on July 11th; Number 8 on July 15th; and the Republic Raimund Mine on July 17th.

Q. On each of these visits to the mines, Mr. Wheeler, were representatives of the company owning the particular mines you visited present?

A. Yes.

Q. On the trips through the T. C. I. mines, was anything said to you by representatives of the T. C. I. as to each mine—

Mr. Burr:
We object to that question.

Mr. Cooper:
I haven't finished the question.

The Court:
Let him finish.

Mr. Burr:
I beg pardon.

Q. Was anything said to you with respect to whether the means and methods which you visited, saw and utilized were the same as those utilized by the miners in getting to the face and back?

Mr. Burr:
We object.

The Court:
Overruled.

A. Yes.

Mr. Burr:

So I will not have to interrupt Mr. Cooper, may it be understood we have an exception to each of these visits to the mines on July 9th, 10th, 11th, 15th and 17th, as illegal, irrelevant, incompetent and immaterial and not having anything to do with the issues in this case?

The Court:

Yes, we will have that understanding.

Mr. Burr:

I just want to keep from interrupting.

The Court:

Yes, sir.

Mr. Burr:

That is for each plaintiff.

The Court:

Yes, sir.

Q. On your visit to the Sloss Mine was anything said —substantially the same said to you by representatives of the company?

A. Yes, sir.

Q. And on your visit to the Republic Mine was substantially the same thing told you by the representatives of the Republic Company?

A. Yes, sir.

Q. Did these officials also state that those means and modes utilized by you on your trip were the same as those utilized by the men prior to May 1st?

A. Yes.

Q. On these trips did you supervise the taking of any photographs?

A. Yes, I did.

Q. Were these photographs, when taken by you, subsequently developed by you or did you have them developed?

A. Yes, sir, I had them developed.

Q. Are these photographs accurate representations of the various objects in and about the mines you have named and the scenes they purport to represent?

A. Yes, sir.

Q. As each picture was taken, Mr. Wheeler, did you make a notation of it—an accurate notation of the place and subject matter of the photograph?

A. Yes.

Q. Will you state what steps—do you have those notes with you?

A. Yes, sir, I do.

Q. Will you state what steps you took to identify the photographs as to the particular subject and place after they were developed?

A. Yes. After each day's trip into the mine I had the photographs taken on that day developed and immediately identified each picture from my notes and attached to the picture a slip of paper identifying that particular picture.

Q. State whether or not you subsequently numbered the photographs so as to correspond with the numbers in your notes which you testified about?

A. I did.

Q. Mr. Wheeler, will you take these photographs which I hand you—I believe they begin with the T. C. I., and state whether or not these are the photographs about which you have testified?

A. Yes, they are.

Q. Take them now one by one, will you, please, and state to the Court what each photograph represents?

A. This is a picture of the—

Mr. Burr:

Will you identify that so we can know what—

Mr. Cooper:
I am going to offer it in evidence and I think I can save time, if the Court please—

The Court:
You can identify them.

Mr. Cooper:
I am going to identify them as a group and then offer them separately.

The Court:
You ought to identify them.

Mr. Harris:
Have they got an exhibit number on them?

The Court:
I think they should be identified.

Mr. Cooper:
I thought I could save time by identifying them as a group.

Mr. Burr:
We would want them identified.

The Court:
I think they should be identified.

Mr. Cooper:
All right. I will do it that way.

The Clerk:
They will be Intervener's Exhibits 1 to 6.

(Thereupon a group of photographs were marked, separately, Intervener's Exhibits No. 1 to 6, both inclusive.)

Q. Will you state what the photograph I show you marked Intervener's Exhibit 1 for identification is?

A. That is a view from the bath house of the tipple of Number 4 Mine, T. C. I., Muscoda, Number 4.

Mr. Cooper:
Do you wish to see this, Mr. Burr?

Mr. Burr:
No, sir.

Mr. Cooper:
We offer this in evidence as Intervener's Exhibit No. 1.

Mr. Burr:
I suppose my objection covers that?

The Court:
Yes.

Mr. Burr:
But if not, I want to interpose an objection, separately and severally, as to each picture offered.

The Court:
Yes, sir.

Mr. Burr:
Let me have them as you get through.

(Thereupon a photograph showing a view of the tipple of Number 4 Mine, T. C. I., Muscoda, taken from the bath house, was received in evidence as Intervener's Exhibit No. 1.)

Q. Will you identify Intervener's Exhibit Number 2?
A. Yes, sir. That is Muscoda Number 4, the men standing waiting for the man skip.

Mr. Burr:
Of course, we object to his statement as to what the men were standing there doing. The picture shows itself, I assume.

Q. Did you see—

The Court
Well, do you know?

Mr. Cooper:
Pardon me.

Q. Did you see these men aboard the skip shortly after this picture was taken?
A. Yes, sir.

Mr. Cooper:
We offer that picture in evidence as Intervener's Exhibit Number 2.

(Thereupon a photograph showing a group of men at the entrance to Mine Number 4, T. C. I., Muscoda, was received in evidence as Intervener's Exhibit Number 2.)

Q. Will you identify the picture marked Intervener's Exhibit Number 3?
A. That is Muscoda Number 4, the same location, showing the men in the man skip.
Q. Was this picture taken in the open before the skip entered the portal?
A. Yes, sir.

Mr. Cooper:
We offer that as Intervener's Exhibit 3.

Q. Will you identify—

Mr. Burr:
I would like to have those, please, sir.

The Witness:
That is the skip tender riding in front.

The Court:
That is the skip tender riding in the front?

The Witness:
Yes, sir. The wire you see in the picture is the signal wire.

Mr. Burr:
We object to that.
What was the last number you offered?

Mr. Cooper:
Three.

(Thereupon a photograph showing a group of men in a man skip at Mine Number 4, Muscoda, T. C. I., was received in evidence as Intervener's Exhibit No. 3.)

Q. Did you ride this skip down represented on the photograph marked Exhibit 3?
A. Yes.
Q. Were you able to remain standing as the men shown in this picture are standing during the entire trip?
A. No. We had to bend over and keep our heads below the level of the skip.

Q. I believe you identified the skip tender for the Judge?

A. Yes.

The Court:

Yes.

Q. Will you identify Exhibit 4, please?

A. This is a picture of men getting into the man skip at Muscoda Number 6.

Mr. Cooper:

We offer that as Intervener's Exhibit Number 4.

(Thereupon a photograph showing men getting into the skip at Muscoda Mine Number 6, T. C. I., was received in evidence as Intervener's Exhibit Number 4.)

Q. Will you identify the photograph marked Exhibit 5, please?

A. This is a picture—

The Court:

I want to ask a question about this one.

Mr. Cooper:

All right, sir.

The Court:

Were they getting into the skip in the mine, at the man loading station?

The Witness:

This was at the man loading station at the tipple of the mine before going in.

The Court:
Before going in?

The Witness:
Yes, sir.

Q. Did you identify the one you have marked 5?
A. This is a picture of men jumping into the ore skip at Muscoda Number 6.

Mr. Cooper:
We offer that as Intervener's Exhibit No. 5.

(Thereupon a picture showing men jumping into the man skip at Mine Number 6, Muscoda, T. C. I., was received in evidence as Intervener's Exhibit No. 5.)

Q. Will you identify photograph Number 6, please?

The Court:
Are you properly marking them as we go?

The Clerk:
I have them all marked on the back.

Q. Go ahead.
A. This is a loaded ore skip—man skip ready to start in the mine.

Mr. Burr:
Where is that?

The Witness:
Muscoda, Number 6.

Mr. Cooper:
We offer Exhibit Number 6.

Q. Did you see it begin to descend immediately after this picture was taken?

A. Almost immediately afterwards.

(Thereupon a photograph showing a loaded man skip at Mine Number 6, Muscoda, T. C. I., was received in evidence as Intervener's Exhibit No. 6.)

Q. Now, I believe these photographs are of a different mine.

Will you take the one at the top marked Intervener's Exhibit 7 and begin with it and identify it, please, sir?

Mr. Burr:

Is this a new series?

The Witness:

That is—

Q. What mine are these from, Mr. Wheeler?

A. Tennessee Coal, Iron & Railroad, Number 4, this first picture. That is the heading, Number 8, Number 4 mine.

Q. Mr. Wheeler, did you see men working beyond this point—in which direction was the photographer looking?

A. Looking towards the face of the stope.

Q. And you saw men working beyond this point?

A. Yes.

Q. Digging?

A. Yes, sir.

Mr. Cooper:

We offer that as Number 7.

Mr. Harris:

What mine is that? I didn't get it.

The Witness:
T. C. I. 4.

(Thereupon a photograph showing heading Number 87 in Mine Number 4, Muscoda, T. C. I., was marked Intervener's Exhibit 7, and received in evidence.)

The Court:
Now, is this a stope?

The Witness:
That is a heading.

The Court:
A heading, isn't it?

The Witness:
The car in the background is opposite the stope, you see.

Q. Will you identify the photograph marked 8, please?
A. This is the 7th right heading in the number 2 haulage way in T. C. I. Number 4 Mine.

Mr. Cooper:
We offer this as Exhibit Number 8.

(Thereupon a photograph showing 7th right heading in number 2 haulage way, Number 4 Mine, Muscoda, T. C. I., was marked Intervener's Exhibit No. 8, and was received in evidence.)

Q. Can you tell us in which direction this figure—this man was looking at the time the picture was taken?
A. He was walking down the heading and towards the stope.

Q. Do you recall what that object is he appears to be stepping over?

A. That is a wench rope or hoisting rope.

Q. Will you identify the photograph marked Number 9, please?

A. This is taken from the location looking in the opposite direction—

Mr. Burr:
Is this Number 9?

Mr. Cooper:
Yes, sir.

A. That is at the 7th right heading in Number 2 haulage looking towards the portal down the haulage way.

Mr. Cooper:
We offer this as Exhibit Number 9.

(Thereupon a photograph taken at 7th right heading in Mine Number 4, Muscoda, T. C. I., looking towards the portal of the mine was marked Intervener's Exhibit No. 9, and was received in evidence.

Q. Mr. Wheeler,—

Mr. Burr:
What mine is that in?

Mr. Cooper:
T. C. I. 4.

Mr. Burr:
7th right, number 2 haulage?

The Witness:
Number 2 haulage, 7th right heading.

Mr. Burr:
7th right heading, Number 2 haulage.

Q. Mr. Wheeler, at this point where this picture was taken, was anything said to you by the company officials about the grade?

A. Yes.

Q. What was said to you and by whom?

A. That is about a six or seven percent grade, according to Mr. McKenzie, the Division Engineer.

Mr. All:
Is that nine?

The Witness:
Yes, sir.

Q. Identify Number 10, please.

A. Number 10 is the Number 2 haulage at 3rd left, which is considerably nearer the portal,—the same haulage way but much closer to the portal.

Mr. Burr:
Number 2 haulage, what heading?

The Witness:
At Number 3 left.

Mr. All:
What mine?

Mr. Burr:
Still in Mine Number 4, are you?

Mr. Cooper:
Yes, sir. We offer Exhibit 10 in evidence.

(Thereupon a photograph taken at 3rd left, Number 2 haulage, Mine Number 4, Muscoda, T. C. I., was marked Intervener's Exhibit No. 10, and received in evidence.)

Q. Will you take Number 11 next, please?

A. Number 11 is at heading 89, first upset, looking towards the face. The picture shows the scraper loader, mechanical loader in the background.

The Court:

At the face?

The Witness:

This—

The Court:

You mean it is—

The Witness:

This is pulling ore out from the face, which is up in the stope. This shows the opening to the stope.

Mr. Cooper:

We offer in evidence Intervener's Exhibit Number 11.

(Thereupon a photograph taken at 89 heading, first upset, looking towards the face, in Mine Number 4, Muscoda, T. C. I., was marked Intervener's Exhibit No. 11, and was received in evidence.)

Q. At that point, Mr. Wheeler, did any official of the company say anything to you with respect to what men walked along the track shown in that picture?

A. Yes. The crew that works in the stope and the man who—

Mr. Burr:

I can't hear you.

A. —runs the scraper loader go past that point to the stope.

Q. I believe the stope is to the right off from the car?

A. Yes, sir.

Q. Did the men say anything to you at about what point on that photograph the men were required to be by 6:45 A. M.?

A. The scraper loader,—the man that runs the scraper loader was supposed to be at the scraper loader and the head miner and drill men who worked in the face are supposed to be at the face or getting their tools in a box beyond this point.

The Court:
Mr. Cooper, isn't this bringing in hearsay testimony?

Mr. Cooper:
No, sir. He is stating what an official told him.

Mr. Burr:
He uses the word official. Was any official down there?

Mr. Cooper:
Representatives?

Mr. Burr:
Well, I would like to know what representatives you are talking about.

The Witness:
Mr. J. L. Parsons, the mine foreman.

Mr. Cooper:
We intend to show what was specifically told him.

Mr. Burr:

We object. It is not only the grossest sort of hearsay, but it is after the event of the thing for which this case is being tried.

The Court:

Overruled.

Q. And this represents—Did Mr. Parsons tell you at what point the men were supposed to be prior to May 1, 1941?

A. That related to prior to May 1st.

Q. Will you identify Number 12 next, please?

A. This is the northeast left manway at the lower end of the run around at the bottom of the slope. The run around is the car dump where the ore is dumped into the skip.

Q. Did Mr. McKenzie, who, I believe you said, was an engineer of the company, accompany you—

The Court:

Just a minute. What did you say this is?

The Witness:

That is a man way, part of the left man way.

The Court:

That is where the men have to go?

The Witness:

Yes, sir.

The Court:

Walk along?

The Witness:

Yes, sir.

The Court:
That is a passage for the men?

The Witness:
Yes, sir.

Q. Do you know or were you told whether or not beyond this point the tool house was located?
A. The tool house is located at the back end of that in the background.
Q. Were you told by Mr. McKenzie what that distance is from the point where you were to the tool house?
A. It is about 200 or 250 feet.
Q. Did Mr. McKenzie say anything to you with respect to the service men who have to walk that distance?
A. The service men at that point have already picked up their tools at the tool house.
Q. You are speaking now of prior to May 1, 1941?
A. Yes, sir.

Mr. Burr:
Does Your Honor think statements made as to what happened prior to May 1, 1941, on the trip made during the trial of this case to a representative of the government is admissible evidence in this case?

The Court:
Yes, I think it is.

Mr. Burr:
All right, sir. We want to call your attention to it and take an exception.

Mr. Cooper:
We offer in evidence the photograph marked Exhibit 12.

(Thereupon a photograph taken in the northeast left manway at the run around in Number 4, Muscoda, T. C. I., mine, was marked Intervener's Exhibit No. 12, and was received in evidence.)

Q. That was number 12. Will you identify Number 13, please?

A. This is a picture taken in Muscoda Number 6. It is the 5th right south auxiliary heading looking up the slope from the stope towards the portal.

Mr. Cooper:

We offer that picture in evidence.

(Thereupon a picture taken in Mine Number 6, Muscoda, T. C. I., at 5th right auxiliary heading was marked Intervener's Exhibit Number 13, and was received in evidence.)

Q. Can you identify the figure shown in that picture?

A. That is Mr. Guyton, works superintendent of the T. C. I.

Q. Was anything said to you with reference to the grade of the haulage way shown in the picture?

A. That is about a six degree slope.

The Court:

Six?

The Witness:

Yes, sir.

Q. Take Number 14 next, please, sir.

A. This is the 6th left heading from the northeast haulage. It is about 300 feet from the lunch table.

Mr. Burr:

That is in mine Number 6?

The Witness:
Yes, sir.

Mr. Burr:
That is 6 what heading?

The Witness:
Six left heading on the northeast haulage.

Q. In which direction is this facing, Mr. Wheeler?
A. That is facing the portal.
Q. Are you able to identify the objects lying between the ties at this point?
A. That is muck.

Mr. Burr:
I can't hear you.

The Witness:
That is muck and slate, ore and slate.

Mr. Cooper:
We offer that picture in evidence.

(Thereupon a photograph taken at 6th left heading on the northeast haulage way in Mine Number 6, Muscoda, T. C. I., was marked Intervener's Exhibit No. 14, and was received in evidence.)

Q. Take Number 15 next, please.

The Court:
You say this is the haulage way.

The Witness:
And a man way.

The Court:
And a man way?

The Witness:
All these pictures are taken in places where the men walk.

Q. Number 15 next, please.
A. Number 15 is taken in Number 6 mine. It is the man way from the rotary dump to the east haulage, about 1200 feet long.

Mr. Cooper:
We offer this as Number 15.

(Thereupon, a photograph taken in Number 6 Mine, Muscoda, T. C. I., showing the man way from the rotary dump to the east haulage, was marked Intervener's Exhibit No. 15, and was received in evidence.)

Q. Mr. Wheeler, did the representatives of the company accompanying you state anything with respect to the grade at this point, the grade in this man way?
A. The grade in that man way varies from about five degrees to 17 degrees.
Q. Take number 16, and state whether or not that is the same mine?

Mr. Burr:
What is that you are referring to now?

Mr. Cooper:
16.

Mr. Burr:
Still in Number 6?

Mr. Cooper:
No, sir. I believe this is a different mine.

A. This picture is taken in T. C. I. Number 8, Wenonah. It is the right manway looking through the door at the hoodlum at 106 heading.

The Court:
Looking through from—

The Witness:
The door on the hoodlum or manloading station.

The Court:
Is there a door there?

The Witness:
Yes. This next picture shows the door.

Q. Before you get on to the next picture, can you identify those figures on that picture?
A. Yes, I can. Mr. Guyton is in the picture, and Mr. McKinney and Mr. Mitchell of the T. C. I., and the camera man for the T. C. I.

(Thereupon a photograph showing the right manway in Number 8 Mine, Wenonah, T. C. I., was marked Intervener's Exhibit No. 16, and was received in evidence.)

Q. Next I believe, is Number 17.
A. This is looking back towards that door at the same point, 106—

Mr. Burr:
I can't hear you, Mr. Wheeler.

The Witness:
That is looking back towards the door at the same point, 106 heading.

The Court:
Sixteen?

Mr. Cooper:
That is 17.

Mr. Burr:
106?

The Witness:
Yes, sir.

The Court:
Is this after he leaves the hoodlum?

The Witness:
Just after you leave the hoodlum. The hoodlum is in the background.

Mr. Cooper:
We offer Exhibit Number 17 in evidence.

(Thereupon a photograph taken at 106 heading, looking towards the man loading station in Mine Number 8, Wenonah, T. C. I., was marked Intervener's Exhibit No. 17, and was received in evidence.)

Q. Take Number 18 next, please, sir.

A. This picture is taken in the same right manway about four or five hundred feet from the hoodlum.

Q. Mr. Wheeler, how was the walking as you found it at this point where the picture was taken?

Mr. Burr:
We want to put in a special objection to that, how Mr. Wheeler found the walking.

The Witness:
I think the picture speaks for itself.

The Court:
What is that?

The Witness:
That is built up—

Mr. Burr:
In view of Mr. Wheeler's answer, I want to withdraw my objection.

A. The men walk past this point towards the figure in the background. They go past this point built up of steel rails. The air is pulled under there.

The Court:
The men go under there—

Mr. Burr:
I want him to answer the question he asked him.

The Court:
What question?

Mr. Burr:
He said the pictures speak for themselves. I want him to answer the question.

The Witness:
You want me to answer it?

Mr. Burr:
Yes, sir.

The Witness:
Rather rough going.

Q. The picture 18—

Mr. Burr:
Which is the one you are asking him about—

The Witness:
This is the same way.

Mr. Burr:
What is the number?

Mr. Cooper:
We are still on 18. He hasn't identified 19 yet.

Mr. Burr:
That is the one he says is rather rough?

Mr. Cooper:
That is right.

The Court:
All right.

Mr. Cooper:
We offer Exhibit 18 in evidence.

(Thereupon a photograph showing a view in the right manway of Mine Number 8, Wenonah, T. C. I., was marked Intervener's Exhibit No. 18, and was received in evidence.)

Q. Did you state the length of the particular manway?

A. That manway is about 2500 feet long.

Q. Do you know the grade at this particular point?

A. That grade varies again from about five to 20 degrees; perhaps a little bit more.

Q. I believe Number 19 is next.

A. This is a view of the same man way, slightly further down the hill.

Mr. Cooper:

We offer that as Number 19.

(Thereupon a photograph showing a view in the right man way of Mine Number 8, Wenonah, T. C. I., was marked Intervener's Exhibit No. 19, and was received in evidence.)

Q. In which direction does that photograph look?

A. That is looking back up the hill towards the hoodlum.

Q. You walked by this point on your visit?

A. Both going down into the mine and coming back up.

Q. Take Number 20 next, please, sir.

A. Number 20 is a picture taken at the foot of the same man way looking up the hill.

Mr. Cooper:

We offer this as Number 20.

(Thereupon a photograph taken at the foot of the right man way of Mine Number 8, Wenonah, T. C. I., was marked Intervener's Exhibit No. 20, and was received in evidence.)

Q. Now, at the point where this picture was taken, were you near the foot of the hill?

A. That was within twenty feet of the foot of the hill.

The Court:
This is Exhibit 20?

Mr. Cooper:
Yes, sir.

Q. Were you told what men walked this particular hill represented in this picture?
A. Yes.
Q. What were you told, and by whom?
A. It is one of the main man ways which the miners walk both going to and coming from work.
Q. Who told you that?
A. Mr. McKenzie told us that,—Mr. Mitchell also.
Q. All right, sir. Take Number 21 next.
A. This is the left manway in the same mine, Number 8.

Mr. Burr:
Mine Number 8 you are in now?

The Witness:
Yes, sir.

Mr. Burr:
When did you get in 8? I thought you were in 4 all this time.

The Witness:
No, sir. I said—

Mr. Cooper:
At number 16.

Mr. Burr:
That is right, number 16.

The Court:
Is this going in 8?

Mr. Cooper:
We are still in 8.

The Witness:
Still in 8. We were talking about the right man way This is the left man way. This is a shorter man way,—about 1,000 feet long

Mr. Cooper:
We offer that as Exhibit Number 21.

(Thereupon a photograph showing a view in the left man way, Mine Number 8, Wenonah, T. C. I., was marked Intervener's Exhibit No. 21, and was received in evidence.)

Q. Number 22 next.
A. This picture is taken at 143 left man way in Number 8 mine looking towards the face.

Mr. Cooper:
We offer that as—

Mr. Burr:
Part of the left heading, did you say?

The Witness:
No, left man way, 143 heading.

Mr. Cooper:
We offer that as Exhibit Number 22.

(Thereupon a photograph showing a view of 143 heading, left man way, Mine Number 8, Wenonah, T. C. I.,

was marked Intervener's Exhibit No. 22, and was received in evidence.)

Mr. Cooper:

Hand me the next series of pictures, please. I think they are Sloss-Sheffield.

Mr. Clerk, will you mark those for me, please?

Q. Will you identify Number 23, please, sir, and tell us at what mine—

A. That is Sloss Red Ore Mine Number 2.

Mr. Cooper:

We offer this Exhibit Number 23.

(Thereupon a photograph showing a view at the tally house of Sloss Red Ore Mine, Sloss Company, was marked Intervener's Exhibit No. 23, and was received in evidence.)

Q. Will you tell us who these figures are on the picture, please?

A. Those are miners in front of the tally house.

Q. Had they checked in at the time this picture was taken?

A. No, sir.

Mr. Burr:

Of course, we object to the use of the words "Checked in" like they have been using them all the time.

The question before the Court is what they do. Of course, this man can't know whether they had checked in prior to May 1, 1941.

Overrule the objection.

Mr. Burr:

We except.

Mr. All:
We except.

Q. All right. The next one, Number 24.
A. This is another group of miners at the same point.

Mr. Cooper:
We offer this as Number 24.

(Thereupon a photograph showing a view of a group of miners at the tally house of Sloss Red Ore Mine Number 2, Sloss Company, was marked Intervener's Exhibit No. 24, and was received in evidence.)

Q. Take the next one, Number 25.

Mr. All:
Wait just a minute, Mr. Cooper. Go a little slower.

Mr. Cooper:
I beg your pardon. I believe 24 was the last one.

Mr. All:
I believe it is.

Mr. Cooper:
Did you see that one, Mr. All?

Mr. All:
I have seen both of those. You are getting to 25 now?

Mr. Cooper:
25 now, yes, sir.

Mr. All:
All right.

The Witness:
Are you ready now?

Mr. Cooper:
Yes, go ahead.

Mr. All:
Yes, that is right.

Mr. Cooper:
Yes, 25.

The Witness:
This is a group of men after they have punched the time clock.

Mr. Burr:
I can't hear you.

The Witness:
This is a group of men after they have punched the time clock going towards the portal of the mine.

Q. Are these men emerging from the building in which they punched the clock?
A. That is right.

Mr. Cooper:
I offer that as Exhibit Number 25.

(Thereupon a photograph showing a view of a group of men near the mouth of Red Ore Mine Number 2, Sloss Company, was marked Intervener's Exhibit No. 25, and was received in evidence.)

Mr. Cooper:
Do you want to see that, Mr. All?

Mr. All:
Go ahead. That is all right.

Q. Take Number 26 next, please, sir.
A. This is a group of men sitting on the man cars, and one man going down to the forward cars at the same mine, same portal.

Mr. Cooper:
We offer that as Exhibit Number 26.

(Thereupon a photograph showing a group of men sitting on man cars at the portal to Red Ore Mine Number 2, Sloss Company, was thereupon marked Intervener's Exhibit No. 26, and was received in evidence.)

Q. Mr. Wheeler, were there any cars parked ahead of this group,—these two cars which were shown on this picture?
A. There were four cars out of sight down the hill.
Q. Did you see men load on these cars parked down below?
A. Yes, sir.

The Court:
Were they loaded?

The Witness:
Yes, sir.

The Court:
Four cars below these two?

The Witness:
Yes, sir.

The Court:
Eight cars in all?

The Witness:
Eight in all.

The Court:
That is Exhibit Number 27, is it?

Mr. Cooper:
That is Number 26, Judge.

Q. Will you take Number 27, please, sir?
A. This is taken down in Mine Number 27, 48 slope curve, 81 right.

Mr. Cooper:
We offer this as 27.

(Thereupon a photograph showing a view in Sloss Red Ore Mine Number 2 at 48 slope curve, 81 right, Sloss Company, was marked Intervener's Exhibit No. 27, and was received in evidence.)

Q. Mr. Wheeler, is that an incline going up in the picture?
A. Yes, sir, that is a grade going up.

The Court:
Where did you say it was taken?

The Witness:
That is a man way, a haulage way.

The Court:
Going to work or coming from work?

The Witness:
Looking towards the face, to work.

The Court:
How far is that from the face where they work?

The Witness:
That depends on where they were going.

The Court:
How far is it from the collar of the mine?

The Witness:
That is at the foot of the slope, about 400 feet, I believe, from the man unloading station, something like that.

Q. Take Number 28, please, sir.
A. That is 89 left—left 3.
Q. What are these—

Mr. All:
I didn't hear the last you said.

The Witness:
That is at 89 left 3.

Mr. All:
What do you mean by left 3?

The Witness:
That is the notation I have. Perhaps Mr. Costner can clear that up.

Mr. Cooper:
If there are any questions like that, Judge, they can ask them later.

The Witness:
I think that is 89 heading.

Mr. Cooper:
We offer this exhibit Number 28.

(Thereupon a photograph showing a view at 89 heading, left 3 in Sloss Red Ore Mine Number 2, Sloss Company, was marked Intervener's Exhibit No. 28, and was received in evidence.)

Q. Mr. Wheeler, what were these men doing at the time this picture was snapped?
A. They were cleaning up rock, breaking rock which had fallen from the roof.
Q. Did your trip proceed beyond this point at which this picture was taken?
A. No, sir, it did not.
Q. Why—Why did you stop at that point?

Mr. All:
We object to that.

Q. Were you told anything by the representatives of the company with respect to the conditions beyond that point?

Mr. All:
We object to that on the further ground—

The Court:
Overruled.

Mr. All:
—It can't have anything to do with the interpretation of the language we are concerned with.

The Court:
It is a question of how the men got down there.

Mr. All:
This happened on the 9th day of July, as I understand—

The Court:
Yes, sir.

Mr. All:
—since this trial started.

The Court:
Yes, sir.

Mr. All:
I just want the objection, Judge, it has nothing to do with the case.

The Court:
Overruled.

Mr. All:
Except.

A. The roof condition was very bad, and it was not considered safe for us to go beyond that point by Mr. Costner.

Q. Take Number 29, next, please, sir.

A. That is 88 left, Number 2 slope.

Mr. Cooper:
We offer this as Number 29.

(Therfeupon a photograph showing a view in Number 2 mine, Sloss Company at 88 left Number 2 slope, was

marked Intervener's Exhibit No. 29, and was received in evidence.)

Q. Will you state whether or not that is water photographed there right between the ties—

A. Yes.

Q. Mr. Wheeler?

A. Yes, sir.

Q. How was the footing at this point where this picture was taken?

A. It was slippery, both on the ties and on the rock.

The Court:

Where was this taken?

The Witness:

That was taken near 88 heading.

Mr. Burr:

88 what?

The Witness:

88 left. That was near the far point of the mine where the men were working. There was one stope active beyond that—15 men.

The Court:

What mine is this?

The Witness:

Sloss Number 2.

Q. Were you told whether the men passed that point on the way to the face?

A. Yes; eight men on the day shift and seven at night.

Q. Number 30 next, please, sir.

A. This is in the Sloss Mine looking up the main slope towards the point at which the men unload when they come down in the morning or on the incoming shift. The man standing up in the muck at the upper right hand part of the picture is at the lower point of the unloading—where the men get off. The first car stopped there and the men unloaded above that point.

Mr. Cooper:
We offer that as Number 30.

(Thereupon a photograph showing a view on the main slope of Mine Number 2, Sloss Company, was marked Intervener's Exhibit No. 30, and was received in evidence.)

Q. Mr. Wheeler, did you see the man represented on that picture climbing up to the point which you state is the point at which they load?
A. Yes.

The Court:
Was there any platform in there at all?

The Witness:
Not at that point.

The Court:
Is there any platform for them to get on?

The Witness:
They don't get on. They are unloading there. It is a very steep slope, about 30 degrees,—25 degrees. They get off the first car about where that man is standing.

Q. Will you give me the series for the Republic, please?
A. (Witness hands pictures to Mr. Cooper.)

Mr. Cooper:

The clerk will mark these, please.

Q. Will you take these, beginning with Number 31, and state—identify number 31 and state whether that is a different mine from the mine about which you have just testified?

A. Yes. This is a picture of an ore car—man trip car in Number 2—Pardon me,—Number 1 slope of Raimund Mine of the Republic Steel Corporation.

Mr. Cooper:

We offer that as Exhibit Number 31.

(Thereupon a photograph showing a man trip car at Number 1 slope, Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit No. 31, and was received in evidence.)

Q. Mr. Wheeler, on that photograph, when that photograph was taken, did you count the men on that skip?

A. Yes. There are 25 men on that skip. I was standing in the open—

The Court:

Down—

A. —down underneath there.

Q. They boarded by a ladder?

A. Yes, sir. There is a ladder on the inside also in the upper right hand corner.

Q. Is this the skip that you rode down on?

A. Yes, sir.

Q. Take Number 32 next, please, sir.

A. That is a picture taken looking down the left man way of Number 1 slope just after you leave the hoodlum.

Mr. Cooper:
We offer this as Number 32.

(Thereupon a photograph showing a view looking down the left man way of Number 1 slope, Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit Number 32, and was received in evidence.)

Q. I would just like to ask you, Mr. Wheeler, if you know the height of the man way at this place?
A. The roof at the point at which Mr. Butler is standing is about five feet.
Q. Do you know the elevation at that point?
A. That is minus 640 feet,—below sea level.

The Court:
640 feet below sea level?

The Witness:
Yes.

The Court:
In that mine?

The Witness:
At that point.

The Court:
What mine is that?

The Witness:
This is Republic Steel Corporation, Raimund mine.

The Court:
Raimund mine?

The Witness:
Yes, sir.

The Court:
How much is it where they get off the man trip?

The Witness:
That is right at the hoodlum at the corner of a bench.

Mr. Cooper:
Shall I go ahead, Mr. All?

Mr. All:
Yes, sir; go ahead.

Q. Will you identify Number 33 next, please?
A. This is the same man way looking back from about 100 feet down the hill towards the hoodlum.

Mr. Cooper:
We offer that as Exhibit Number 33.

(Thereupon a photograph showing a view in the left manway of Number 1 slope, Raimund Mine, Republic Corporation, was marked Intervener's Exhibit No. 33, and was received in evidence.)

Q. Will you identify Number 34, please?
A. That is the same man way about four or five hundred feet further down.

Mr. Cooper:
We offer this exhibit Number 34.

Mr. Burr:
Four or five hundred feet down?

The Witness:
Four or five hundred feet down from the hoodlum.

Mr. Burr:
Down from the hoodlum?

The Witness:
Towards the scales.

(Thereupon a photograph showing a view in the left manway of Number 1 slope, Raimund Mine, of the Republic Steel Corporation, was marked Intervener's Exhibit No. 34, and was received in evidence.)

Q. Do you know the height of the roof at that point, Mr. Wheeler?

A. That is under five feet.

Q. How far did that continue?

A. Just a short ways. There are a series of faults in the man way where the rock of the roof comes down.

Q. How far did this type of footing represented here continue?

A. Oh, there was about 700 feet, something of that sort. It would be that way and then start again or stop, change character.

The Court:
This is still in that same mine?

The Witness:
Raimund Mine.

Mr. Cooper:
These pictures are arranged in series, Judge, by mines.

Q. Will you identify Number 35, please?

A. Number 35 is about half way down that man way, which is about 2,000 feet long.

Mr. Cooper:
We offer this photograph as Exhibit Number 35.

(Thereupon a photograph showing a view of the left man way of Number 1 slope, Raimund Mine, of the Republic Corporation, was marked, Intervener's Exhibit Number 35, and was received in evidence.)

The Court:
Does anybody want a morning recess?

Mr. Burr:
I am always ready for a recess.

The Court:
All right; we will have a few minutes recess.

Mr. Burr:
All right, sir.

(Thereupon proceedings were in recess from 10:40 A. M., to 10:50 A. M., at which time proceedings were resumed as follows):

Mr. Burr:
What is this number now?

Mr. Cooper:
36.

Q. Will you identify Number 35, Mr. Wheeler?
A. Yes. That is a point in the same—

Mr. Burr:
Same mine?

A. —mine, and the same man way. That is about 500 feet from the bottom of that slope.

Mr. Cooper:
We offer this as Exhibit Number 36.

The Court:
Where did you say this is?

The Witness:
That is in that same man way in the Republic Mine, about 500 feet from the slope, in the man way.

The Court:
In other words, this is—

The Witness:
It is further on down that man way from the hoodlum.

(Thereupon a photograph showing a view in the left man way of Number 1 slope, Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit No. 36 and was received in evidence.)

Q. Take Number 37, please, sir.
A. This is the same man way nearer the bottom.

Mr. All:
Nearer what?

The Witness:
The same man way nearer the bottom.

Mr. Cooper:
We offer Number 37.

The Court:
How high is the top there?

The Witness:
The top there is well above a man's head,—about 10 or 12 feet, I believe, at that point.

(Thereupon a photograph showing a view in the left man way of Slope Number 1, of Raimund Mine of Republic Steel Corporation, was marked Intervener's Exhibit No. 37, and was received in evidence.)

Q. Will you identify Number 38, please?

A. This is the same man way, but starting back up the hill after the low point in the mine. It looking towards the steps at the fault.

Mr. Cooper:

We offer this as Number 38.

(Thereupon a photograph showing a view in the left man way of Slope Number 1, Raimune Mine, Republic Steel Corporation, was marked Intervener's Exhibit No. 38, and was received in evidence.)

Q. Will you tell us, Mr. Wheeler, whether or not that is water indicated in the middle of the picture?

A. Yes, that is water running down the man way.

Q. What is the direction of the flow at that point?

A. Towards the photographer.

Q. Do you have any idea of its depth?

A. Oh, it varied. It wasn't over two inches deep,—a little stream.

Mr. Burr:

I can't hear you.

The Witness:

It is a little stream running down there not over two inches deep.

Q. In other words, you were still headed into the mine at this point?

A. Yes, sir.

Q. Did those steps go all the way up the hill indicated in this picture?

A. No, they don't.

Mr. Cooper:

Judge, you saw those steps?

The Court:

Yes.

The Witness:

The hill continues after the top of the steps.

Q. Was there anything said to you by a representative of the company, and identify him if there was, as to whether the men walked up these steps represented on that picture, Exhibit Number 38?

A. Mr. B. C. Jones, Assistant superintendent, told us—

Mr. Burr:

Is this 38?

Mr. Cooper:

Yes, sir.

A. —that about 100 men walked up those steps.

Q. Did Mr. B. C. Jones accompany you on this entire visit?

A. Yes.

Q. Did Mr. Jones or anyone else say anything to you with respect to the elevation of the top and bottom of that hill shown on the photograph introduced as Number 38?

A. Yes, sir, the scale house, which is level with the man way, and just before we get to that picture, is at minus 700 feet or 60 feet below the hoodlum, at which we started in this man way in which we taken the picture, and the hill goes up—

Q. I am speaking of 38 and not 39.
A. The hill which you asked me about—
Q. Yes.
A. —continues to a point at 90 left where there is a hoist, and the elevation there is minus 450 feet, or 250 feet above the scale house at the bottom of the hill.

The Court:
Go ahead.

Mr. Cooper:
We offer Number 38.

Q. Take Number 39, please.
A. That is a picture of the steps going up that hill.

Mr. All:
That is 39?

Mr. Cooper:
Yes. We offer that as Exhibit Number 39.

(Thereupon a photograph showing a view of steps in Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit Number 39, and was received in evidence.)

Q. That is the same steps shown in Number 38?
A. Yes.
Q. Do you know the number of steps?
A. About 107.
Q. Did I ask you whether the water flows down the steps represented in Number 38?
A. Yes.

The Court:
Did he say he had answered it?

Mr. Cooper:
He said yes.

The Witness:
The water does flow down them.

Q. Identify Number 40, please, sir.

A. This is a picture in the Raimund Mine of 87 haul way, looking towards the scales at 109.

Mr. Cooper:
We offer that Exhibit Number 40.

(Thereupon a photograph showing a view in the Raimund Mine of the Republic Steel Corporation of 87 haul way, taken at heading 109, looking towards the scales, was marked Intervener's Exhibit Number 40, and was received in evidence.)

Q. Would you tell us whether the roof was measured at that point, Mr. Wheeler?

A. Yes. Mr. Jones and I measured the roof at that point, and it is 69 inches from the middle of the ties to the steel cross beam or steel set.

Q. 69 inches?

A. Yes, sir.

Q. Do you know the height—is this a trolley wire at the right upper part of the picture?

A. Yes, it is.

Q. Do you know the height of that wire at that point?

A. Five and a half feet.

Mr. Burr:
I didn't hear you.

Mr. Cooper:
Five and a half feet.

The Witness:
Five and a half feet.

Q. Take Number 41 next, please, sir.
A. This is in the Republic Mine, 101 left haul way.

Mr. Burr:
One hundred what—

The Witness:
One hundred and one left haul way at 21 stope.

Mr. Cooper:
We offer this as Number 41.

(Thereupon a photograph showing a view of 101 left haul way from 21 stope in Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit Number 41, and was received in evidence.)

Q. Let me ask you, Mr. Wheeler, whether or not that is water in the middle of the photograph here?
A. It is.
Q. Do you have any means of measuring its depth?
A. I saw a locomotive go through there and the water was about half way up on the small wheels.
Q. Was anything said to you at this point by any of the officials or representatives of the company with you at that time, and identify him, if so, with respect to how many men passed this point daily?
A. Mr. Wesson, the mine foreman who accompanied me throughout the trip, told me there were 30 men went by there to and from work each day.
Q. Take number 42 next, please.
A. This is a continuation of the same general walk way at 100½ left, and it is an old track way near 101 left haul way at 29 stope.

Mr. Cooper:
We offer this as Number 42.

(Thereupon a photograph showing a view at 29 stope near 101 left haul way in Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit Number 42, and was received in evidence.)

Q. Can you tell us what those objects are in the middle of the walk way there?

A. The track way is torn up, and those are cross ties and steel rails and spikes and muck and slate.

Q. Take Number 43 next.

A. This picture is taken in the right man way leading to Number 1 slope and the same mine, Raimund Mine, of the Republic Steel Corporation.

Mr. Burr:
Taken in what man way?

The Wintess:
In the right man way—

Mr. Burr:
That is a different man way?

The Witness:
Yes.—leading to the Number 1 slope.

Mr. Cooper:
We offer this as Exhibit Number 43.

(Thereupon a photograph showing a view in the right man way leading to Number 1 slope of Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit No. 43, and was received in evidence.)

Q. Mr. Wheeler, did any of the officials of the company on the trip with you say anything at this point with reference to the elevation at the top and bottom of the hill shown on that photograph?

A. Mr. Jones, the assistant superintendent, informed me that the elevation at the top of the hill was minus 400, or about 200 feet above the elevation at the compressor which is further in the mine and back down the hill.

Q. Mr. Wheeler, on each of these trips about which you have testified, did you meet by pre-arrangement with the representatives of the company who went with you before you entered—

The Court:

I have a question about that exhibit. What exhibit is it; 43?

Mr. Cooper:

43, yes, sir.

The Court:

How far is that scene there from the hoodlum?

The Witness:

43?

The Court:

43.

The Witness:

That is about 700 feet, I think—

The Court:

How far is it from the end of the way? You call it the bottom.

The Witness:

Well, when you get down to the bottom—

The Court:
Then you branch—

The Witness:
—you branch off in all directions. The furtherest point—

Mr. Burr:
I can't hear you.

The Witness:
The furtherest point from which we walked to that point was about a mile.

Mr. Burr:
Furtherest point where was about a mile?

The Witness:
From which we walked in that mine to that point at which the picture was taken, was about a mile.

Mr. Burr:
You mean this picture here, 43, was the furtherest point to which you went?

The Witness:
In the mine?

Mr. Burr:
Yes.

The Witness:
Yes. Pardon me. Say that again.

Mr. Burr:
The furtherest point to which you went?

The Witness:

No. The picture at the steps is fairly close to the hoodlum.

Mr. Burr:

What distance are you talking about? You gave the judge some distance.

The Witness:

I understood the judge asked me how far it was from that picture at the steps to the furtherest point in the mine.

The Court:

Yes, sir; how far the men had to walk?

The Witness:

I am not sure about that. All I know is we walked about a mile from one of the places where the men work to that point.

The Court:

And you say it is about 750 feet from the steps to the hoodlum?

The Witness:

Something like that,—a relatively short distance.

The Court:

All right.

Q. Mr. Wheeler, I asked you whether you met by prearrangement prior to beginning each of these trips through the mines with the representatives and officials of the company who went with you on each trip?

A. Yes, sir, we did.

Q. And those representatives who met with you on each trip accompanied you throughout each trip?

A. Yes, sir; that is throughout each particular mine.

Q. And your testimony in reference to information given to you by these men refers to the representatives who met with you and accompanied you throughout the mines?

A. That is correct.

Mr. Cooper:

Before I finish with Mr. Wheeler,—that is about all I want to ask him,—I would like to state I may have omitted to offer formally all the photographs as we went along. I wish to offer them formally.

Mr. Burr:

Do I understand you have offered all you expect to offer?

Mr. Cooper:

Yes, sir.

Mr. Burr:

May it please the Court, we wish to reserve the cross examination of Mr. Wheeler until we can make a check of the photographs he has identified against the photographs we have taken. I didn't expect them to get to him this morning. We haven't these parties who went with him here. I am expecting them to come into my office at five this afternoon to check that.

The Court:

All right.

Mr. Burr:

May I ask, Jerome, is that all you expect to examine Mr. Wheeler about?

Mr. Cooper:
Yes, sir.

Mr. Burr:
All right, sir. I just didn't want to have to take two bites at it.

(Witness excused.)

Mr. Harris:
Call Mr. Butler.

2952 JOHN BUTLER, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:
What are your initials?

The Witness:
John.

(By Mr. Harris):
Q How old are you, Mr. Butler?
A Forty-four.
Q Where were you born?
A Calera, Alabama.
Q Calera, Alabama?
A Yes, sir.
Q How high did you go in school?
A Seventh grade.
Q Where do you work?
A Raimund mine.
Q What company?
A Republic?

Q. What kind of work do you do at Raimund?

A. I am a contractor.

Q. How long have you worked as an ore miner for the Republic Company?

A. Ever since '36.

Q. Where did you—

Mr. Burr:

Will you wait just one minute for me?

Mr. Harris:

Surely.

Mr. Burr:

All right; go ahead.

Q. When did you first start to working for the Republic—

A. In—

Q. 1936, you said?

A. In 1936.

Q. What work did you first do?

A. I first went to work as pipe man underground.

Q. Well, how long did you work as a pipe man?

A. Well; about three or four months.

Q. And then what did you do?

A. I went to contracting.

Q. Now, had you been in the mining business before you went to work for Republic?

A. Yes, sir.

Q. What mines had you worked for?

A. I worked for the Gulf States Steel at Shannon Mines.

Q. Had you worked at any other mine besides the Gulf States Steel and Republic?

A. I worked for Woodward Iron Company.

Q. Any other?

A. No, sir.

Q. Now, on October 24, 1938, were you a contractor at Republic?

A. Yes, sir.

Q. Well, what do you mean by the word "contractor"?

A. Well, we—a contractor is a drill man, and he does the drilling and the shooting of the ore that is loaded. He has charge of the place. They give him a heading or either a stope, and he is the contractor. The drill man is the contractor.

Q. Now, at Raimund, do you have the mechanical loaders—

A. We—

Q. —or do you have the fist mucking?

A. We have both.

Q. Well, in October, 1938, on up to May 1st this year, did your crew work with a mechanical loader, or did they do fist mucking?

A. The first of 1938 I was on a fist mucking place. I have been on a mechanical loader about eighteen months.

Q. All right. Well, now, what time of day did you go to the bath house on your way in the mine?

A. From 5:15 to 5:30.

Q. Was that from October, '38, to May 1st?

A. Yes, sir.

Q. And what time of day did your crew and the other miners who were working on the day shift begin to gather around the bath house or in the bath house?

A. Well, around five o'clock,—from 4:30 to 5:00 o'clock.

Q. Now, at Raimund, did you have any brass checks?

A. Yes, sir.

Q. Did you have both a badge number and a brass check?

A. Yes, sir.

Q. Now, as you left the bath house, did you have on your work clothes?

A. Yes, sir.

Q. Did Republic charge you anything for the use of the bath house?

A. Fifty cents a month.

Q. Well, when you would leave the bath house, where did you go, Mr. Butler?

A. To the tally house.

Q. And who would you see up at the tally house?

A. Well, we would see the mine foreman and time keeper.

Q. Well, what did you do or say with reference to the time keeper up there?

A. Well, I would always give him my number in the morning.

Q. You mean you handed him a brass check, or you called out your number, or which?

A. No; I handed him a brass check.

Q. And did the members of your crew hand the timekeeper a brass check, each for himself, or did you hand in the brass checks for the members of your crew?

A. They handed it each for themselves.

Q. Then, after handing your brass checks to the timekeeper, what did you do?

A. Well, I would go down into the hoodlum and go down the slope and get on the man trip.

Q. Well, did you have anything to make a light as you went down?

A. Yes, sir; we got a battery light.

Q. Where did you get that?

A. At the other end of the tally house.

Q. Well, did you get the battery light before you handed in your check to the timekeeper or did you get it afterwards or did you have any rule about it?

A. We didn't have any rule about it. Sometimes I would get it before I checked in. If they were crowded around the window I would go over and get my light,—just a step or two.

Q. What kind of light did they use at Ruffner during those three years?

A. I don't know.

Q. I mean at—

Mr. Burr:

Raimund.

Q. —Raimund.

A. At Raimund we used a battery light.

Q. Did they company furnish them or rent them to you?

A. They rented it to us.

Q. What did they charge?

A. They were two prices, a six cent light and an eight cent light.

Q. Six cents and what?

A. Six cents a day and eight cents a day, two types of light.

Q. Two types of light?

A. Yes, sir.

Q. Well, what size are those lamps? What would the lamp and battery weigh?

A. About seven pounds.

Q. Well, how do you carry them?

A. We have a belt that goes around us with a strap on it and a hook on the back of the battery that this strap goes through, and you buckle it around you.

Q. All right. Now, then, when did the first man trip start down at Raimund?

A. Five o'clock.

Q. Which man trip did you ordinarily catch?

A. I would ordinarily catch around anywhere from ten minutes to six until six o'clock.

Q. And what time of day did you come out of the mine?

A. I would get back to the tally house anywhere about five to ten minutes of four.

Q. And would you then turn in your battery and your lamp and take up your check?

A. Yes, sir.

Q. Now, on the way into the mine, did you walk or did you go on a man trip?

A. Well, we walked from the bottom of the hill—what they call down in the bottom, the steep going, we walked from there to the working places.

Q. Well, what kind of cars were used for man trips at Raimund?

A. Well, in the afternoon coming back, we would ride about a mile back to Number 2—from what they called the foot of the hill back to Number 2.

Q. All right. The kind of man trip cars is what I am asking about. What kind of cars are those they run from the mouth of the mine to the hoodlum? What kind of cars did you ride in going from the mouth of the mine down to the hoodlum?

A. Oh, we rode in a man skip.

Q. What kind of a skip is that?

A. Well, it was—in other words, it was a kind of square box, and had a lattice along on each side of it and—I don't know—it must have been fifteen feet long, I would say.

Q. Well, was it made out of steel?

A. Yes, sir.

Q. Well, what did it have on the floor?

A. It had a lattice on the floor.

Q. Well, did that car go down into the mine on—any part of it was a steep slope?

A. Yes, sir.

Q. Do you know what degree the slope was it went down on?

A. I have heard it said that it was fifty degrees.

Q. Now, how many men from October 24, 1938, would you ordinarily have in that man skip on the way into the mine?

A. Anywhere from thirty to thirty-five.

Q. Well, Mr. Butler, how did the men in that man trip stand or arrange themselves to keep from being crushed as they went down this fifty degree slope?

A. Well, for—before—there was part of that time, about the last year, they put railings, banisters, across the skip and you can lean against them and take a kick, catch against them to hold yourself off of them.

Q. What were they made out of?

A. Something like a two inch iron pipe.

Q. You mean a round, iron pipe that went from one side of the man skip to the other?

A. Yes, sir.

Q. And how many of those iron cross pieces did they put in?

A. There were three bars.

Q. Now, you say, "take a kick." What did you mean by "take a kick?"

A. Well, I would hold against it.

Q. You mean in order to keep these men from pressing your stomach against the iron bar—

Mr. Burr:
We object to Mr. Harris—

Q. —did you—I haven't finished.

Mr. Burr:
You had gone far enough.

Q. You would take a kick—

Mr. Burr:
Just a minute.

Mr. Harris:
I hadn't finished my question.

Q. —take your feet against the iron bar and hold against the iron bar?

Mr. Burr:
We object to that question.

The Court:
Overruled.

Mr. Burr:
We except.

A. Yes, sir.

Q. Was that kick taken by just one person or each group of men against the iron bar?

A. If there would be three of us standing against this iron bar, we would all three catch a kick.

Q. How about the next iron bar?

A. They would catch a kick. Those above us would catch a kick.

Q. Would those in that position, next to the iron bar, ordinarily ride in that position, you say catching a kick, ride from the mouth of the mine to the man unloading station in that position?

A. Yes, sir.

Q. You say they put the bars in when?

A. I would say about a year ago.

Q. About a year ago?

A. I think so.

Q. Before they put the bars in how did the men that were down at the lower end of that skip, as it was going down the slope, what means did they use to keep from being crushed?

A. They would be down back against the back end of the skip and they would hold up, and, of course, each man would hold up all the could to keep from mashing. They would hold to the side with one hand.

Q. What about those in the middle, what did they hold to?

A. Those in the middle couldn't do anything—

Q. Was there three seated cross ways?

A. Three or four.

Q. And the three at the lower end had a kick on the end of the skip, is what you testify?

A. In other words, they would be at the back end, and they would have a place against it.

Q. Show the judge up there on the board.

A. If I was on the back end, I would get a kick like this and hold up, and some others would lean against me, and I would hold against him and hold up.

Q. You three men would have your backs against the lower end of the skip?

A. Yes, sir.

Q. Well, suppose you were an end man. There would be three of you. You would be in the middle?

A. That is right.

Q. All the way up the skip from the lower end to the top end, was there anything for that middle man to grab against so his weight would not be coming down on the middle man that had the kick?

A. No, sir.

Q. The men on the side, was there anything for those men to take a kick on?

A. Yes, sir, there were three slats of iron, about one by four and they would catch to that and hold,—take a brace on the lattice and hold up.

Q. You mean there was lattice work on the floor so when they started down these steep places they could hold against that?

A. Yes, sir; they could brace with their feet.

Q. During the time you were working there from October 24, 1938, to May 1, 1941, in going in, did you ever see anyone who was mashed or injured on that skip you have described?

A. Yes, sir, I did.

Q. Who did you see that was mashed or injured?

A. Mr. Eady got a couple of ribs broken.

Q. Now, when did Mr. Eady get a couple of ribs broken?

A. Now, that was just before or a short time after they put those banisters across, if I make no mistake.

Q. You call them banisters; it is those two inch bars you are talking about?

A. Cross pieces.

Q. All right. Who else got hurt?

A. Mr. Kendrick fell one afternoon as he went to get in the skip.

Mr. Burr:

I didn't get that name.

The Witness:

Kendrick.

Q. What Kendrick was that?

A. Rufus Kendrick.

Q. Did he fall getting out of the skip or getting in the skip?

A. Getting in the skip.

Q. In getting in that skip do you enter from the sides or ends, or do you jump down in it?

A. We enter from the door. There is a steel door. It is on hinges, and you can pull it back open and step up into the end of the skip and go down all the way down to the bottom.

Q. Now, how far is it you ride on that skip going into the mine?

A. Well, I judge it would be about 2500 feet.

Q. How many minutes does it take from the time the skip starts moving until the time it stops at the main man unloading station?

A. I would say around six minutes,—five or six minutes.

Q. When you start off at Raimund, who starts the skip?

A. Well, you first come into the bull pen—

Q. When you first what?

A. Come into the bull pen up at the tally house—you walk down and come into the bull pen.

Q. What is the bull pen?

A. It is a place underground we have got bannisters up, walled off for us to go in there to catch the skip. You are counted out of these into the slope and you walk down the slope about 100 feet, I would say, and catch the skip.

Q. Is that bull pen fences in?

A. Yes, sir. It is underground. There is a partition there and a place here for the white and a place there for the colored.

Q. Does every person that works in the mine have to go through that bull pen before he gets to the skip?

A. He does.

Q. Now, when he get into the bull pen, you said something about somebody counting them out.

A. Yes, sir.

Q. Who counts them out?

A. The mine foreman or assistant mine foreman counts them out.

Q. And when he counts them out does he give any directions to the skip tender, or chainer? Which do you have out there, a skip tender or chainer?

A. We don't have none.

Q. You don't have either one?

A. No, sir.

Q. When the mine foreman or assistant mine foreman counts the men out, where do they go?

A. They go down and get on the skip.

Q. How do you get the skip started?

A. The last man on the skip shuts the door. He has a rapping stick, and somebody reaches over and raps it off.

Q. Has that system obtained since October 24, 1938, to May 1, 1941, or taking them in the bull pen and the mine foreman or assistant mine foreman counting them out into the skip?

A. Yes, sir.

Q. Now, after you have gotten your carbide and reported to the timekeeper—

A. We don't get carbide.

Q. I mean your light. After you have gotten your light and reported to the timekeeper, and before the mine foreman counts you out through the bull pen, did you ordinarily have any dealings of any sort with the mine foreman or assistant mine foreman as you were going into the mine?

A. Yes.

Q. Well, now, what would be the occasion for your conversation or dealings with the mine foreman or assistant mine foreman before you went in the mine?

A. Well, I would look on the board and see if I had a crew, or if any of my muckers were off I would ask for another man.

Q. Who would you ask?

A. The mine foreman.

Q. Well, did he tell you before you got on the man trip or wait until you got down in the mine and tell you?

A. Tell me before I got on.

Q. All right. Did you ever have any questions to discuss with him before you went through the bull pen?

A. No; that was about all unless something happened to the place or something like that.

Q. What do you mean by something happening to your place?

A. Well, probably had a fall in it, something like that.

Q. Would he tell you about that?

A. Yes, sir.

Q. What was the rule and custom,—if you had a fall in your place on the day shift, did you leave word with the foreman so he could tell the night shift that followed you, and if the night shift man had a fall, did he leave word with the mine foreman or assistant mine foreman so he could tell you about it?

A. Yes, sir; he would leave word if my place didn't work.

Q. What about needing any tools of equipment? Did you ever pick up any of that on top and take it down with you?

A. We bought our tools outside.

Q. Well, what tools did you buy?

A. Our shovels and picks and rock hammers is about all we had to use.

Q. After you bought them outside how did you get them down to the place where you were drilling or blasting?

A. I would get a requisition from the mine foreman and go to the supply house and get them and bring them back and carry them down with me.

Q. Did you have to buy any powder out at Raimund?

A. Yes, sir.

Q. Did you buy that underground or on top?

A. I bought it underground.

Q. How far did you go from the man unloading station before you got to the magazine where you got your powder?

A. Well, there was different magazines. They were located in different sections of the mine, and the magazine I got powder from was located at 103 motor pit for a good long time.

Q. Would you get your dynamite at any particular time?

A. We had a certain hour to get it,—from 11 o'clock until 12 o'clock.

Q. Now, what about your drills and wedges and hangers out at Raimund; where did you get those?

A. Well, I didn't have to get those. My crew got those.

Q. Now, with a man-loading crew you didn't need any hangers?

A. No, sir; not with a hand mucking place.

Q. And what time in the shift did your crew get the wedges that they would need?

A. They would get them every morning.

Q. Well, now, the drill bits?

A. I got those every morning.

Q. Well, did you need wedges if you didn't have a mechanical loader?

A. No, sir.

Q. Now, you had a bull pen at the top of this main slope. Did you have one at the bottom?

A. Yes, sir.

Q. Well, when you were on the way out,—

A. We had two bull pens at the bottom.

Q. You did? And how did the men go through the bull pen at the bottom on the way out?

A. Well, at the foot of the hill—what they call the foot of the hill at Number 1, we would come down what they called the steep gomg where those steps is at and come on into the bull pen and we would stay there until the man trip come.

Q. Are you talking about the man trip that carried you up to the mouth of the mine?

A. No, sir.

Q. Now, I haven't gotten over, Mr. Butler, to that other haulage way down underground. I am talking about the man trip that came down that main slope.

A. Well, we walked in the morning all the way in to the work.

Q. Sir?

A. We walked in the morning all the way into the work, but we would ride part of the way back in the afternoon.

Q. Yes, Mr. Butler, but what I am talking about now, I am talking about the ride down the main slope, and you coming out from the bottom of the main slope, and I am talking about the bull pen, if there is one there, at the bottom of the main slope where the man trips stop.

A. Yes, sir.

Q. Is there one there?

A. Yes, sir.

Q. How are the men worked through that bull pen?

A. Well, there is a right hand bull pen and a left hand bull pen. The whites are on the right and the colored on the left. Coming off the bull pen—

Q. Is there anyone there to control you as you come off the skip?

A. The mine foreman.

Q. Does he call them out as he does on top?

A. The same way.

Q. And when he has counted out enough, what does he do?

A. He says, "That is enough," and sticks up his hand and nobody else goes out.

Q. When, from October 24, 1938, until May 1, 1941, did the first one of those man trips start out from that first bull pen at the foot of the slope?

A. I would be afraid to say as to the first one. I can only speak for the one I caught.

Q. Which one did you catch?

A. I would say anywhere from 15 minutes to four until four o'clock.

Q. All right.

A. I will say anywhere from 3:30 to four o'clock. If I had good luck and got through I would get over there by 3:30 and start up.

Q. Now, after you passed from the hoodlum, how did you get, from October 24, '38, up to October 1, 1941, to your working place?

A. Walked.

Q. How far would it be?

A. Just about two miles, I would say.

Q. Would it be on level ground or down dale or how would it be?

A. It would be part up grade and part down hill.

Q. Is the place where you are working the one that has that 107 steps in it?

A. Yes, sir.

Q. Did you, in your travel, climb those 107 steps?

A. Yes, sir.

Q. Were they wet or dry?

A. They were wet.

Q. Now, in this mine you were in out there, has there been with reference to walkways, stopes, man ways, haulage ways,—are those mines in the same general shape and condition during the month of July that they were during the month from October 24, 1938, until May 1, 1941?

A. Well, practically.

Q. Now, then, after you climb 107 steps, do you then have to climb any more steps?

A. No; that is all.

Q. Well, now, on your way out in the evening do you get a ride?

A. We did up until May 1st; we got a ride part of the way.

Q. Well, where did the ride start and where did it end on the way out?

A. Well, it would start along about the bottom of those steps. There was another bull pen there we come over to and get into the bull pen and catch the locomotive motor

and it would pull us over to Number 2 in the evening going back.

Q. Was that locomotive motor a motor that had been hauling ore?

A. Yes, sir.

Q. Did they have a regular schedule whereby, when you arrived at your bull pen near the steps, that you would know the exact time you would be able to step on that man trip and go out?

A. Well, it wasn't a regular schedule.

Q. Well, did you ever arrive there during those three years and have to wait any length of time before you could get your ride?

A. Yes, sir, I have waited as high as thirty-five and forty minutes.

Q. While you were waiting for the ride, what would the cars you were going to ride on be doing?

A. The cars I was going to ride in would be over in the side track. They wouldn't put them over until the run was over.

Q. What do you mean by a run?

A. After they had hauled all the ore they were going to haul that day they would pick up those cars over at Number 2 and bring them down to Number 1 and we would get in the man cars.

Q. And after you would get in the man cars you would be carried how far?

A. About one mile.

Q. And after the man cars let you out on that trip, how far did you have to walk before you got on the skip that took you out?

A. I would say about four or five hundred feet.

Q. During this time, from October, '38, up until May 1, 1941, did anybody come through the mine taking your time—

A. No, sir.

Q. Down in the mine?

A. No, sir.

Q. How were you paid?

A. I was on tonnage, tonnage rate.

Q. Now, what rate did you get a ton for your work?

A. Well, it run from 24 to 36 cents a ton, different rates—different places—different widths of places would have different rates.

Q. Which carries the higher price?

A. The narrow widths.

Q. The narrow work?

A. Yes, sir.

Q. And from October, '38, to May 1, 1941, were you paid all the time on a tonnage basis?

A. I was.

Q. Now, suppose you produced twenty tons on a shift and your pay was made,—how many tons would you get paid for?

A. Twenty tons.

Q. Suppose you produce ten tons; how many would you get paid for?

A. Ten tons.

Q. Did the number of tons that your crew produced always determine the amount of your pay?

A. That is right.

Q. Well, suppose you didn't get out any tonnage at all?

A. Didn't get no credit.

Q. Well, did you have any times down there during the past three years where you didn't get out any tonnage?

A. Yes, sir.

Q. Did you have any days where neither you nor your crew made any money at all?

A. Yes, sir.

Q. Did that occur very often?

A. Well, not often.

Q. Well, in your work did you have good days and bad days?

A. Yes, sir, I did.

Q. Now, the men on your crew, were they paid on a tonnage basis too?

A. They was.

Q. How often have those tonnage prices changed since October 24, 1938, up to May 1, 1941?

A. They haven't changed.

Q. They have been the same?

A. Yes, sir.

Q. Now, what did the muckers that worked with you get a ton?

A. Forty-two cents,—42½ cents a ton.

Q. Well, how did you know which mucker had shoveled the most ore?

A. Each mucker had a number of his own, a check number, his number,—

Q. Yes.

A. —and he had one of my numbers and one of his numbers.

Q. Yes.

A. When he would load a car he would put my number on it and also his number. The scale man could tell by the numbers whose ore it was.

Q. Suppose you had three fist muckers and they brought you three cars in a trip,—suppose you had two fist muckers and they brought you three cars in a trip and—

A. Yes, sir.

Q. —say Bill Smith loads the first car,—

A. Yes, sir.

Q. —and Tom Jones the second one.

A. Yes, sir.

Q. Then what would they do? Did they sit still?

A. No, sir, they split.

Q. How would they tell who would get credit?

A. Each one of them would hang his number on the side and the weighman would divide that tonnage with them, and they would also hang my number on there.

Q. Now, before May 1, 1941, when, as to the hour of the day, would you start drilling?

A. Well, I would usually start around 8:30, 8:00, 8:15 or 8:30,—as soon as I could get in and get my place quarried out, get my hose pipes drug up. It would take me about an hour and a half to get started.

Q. And when would you shoot?

A. Three o'clock.

Q. Now, since May 1st, when do you actually start your drilling?

A. About eight or 8:15.

Q. And when do you shoot?

A. 1:15.

Q. Now, did—was there any rule of the company before May 1st with reference to the time of the day you could do your shooting?

A. There was.

Q. Suppose you had sharp drills and good air and drilled your holes quickly and were through drilling and were ready to shoot at 1:00 o'clock, before May 1st could you shoot then or did you have to wait until the 3:00 o'clock time?

A. I had to wait until 3:00.

Q. In your walking into the mine and out of the mine could you stand up all the time, stand up straight?

A. No, not all the way.

Q. How many places would you say you had to duck your head?

A. Well, there were several.

Q. Well, how about the trolley wires in Raimund? Were there any places where you had to watch out for trolley wires?

A. Yes, sir.

Q. How many of these would you say you passed during those three years?

A. Well, back in the workings, in the headings, and on the haul ways, in the haul ways from the place back

from 87 practically you had to watch all the way over. If you didn't you would butt into it.

The Court:
Do what?

The Witness:
Butt into it, hit it with your head.

Q. Now, ordinarily, during those three years before May 1st, were you drilling right up to three o'clock or ordinarily did you finish your drilling before three o'clock?
A. Ordinarily I would have drilled all I wanted to drill by twelve o'clock.
Q. And then what did you do from twelve o'clock until three?
A. Just fool around.
Q. What?
A. Just fool around,—wait until shooting time.

Mr. Harris:
You can take him.

Cross Examination.

(By Mr. Burr):
Q. Mr. Butler, you mean that ordinarily you would get through your work by twelve o'clock and then just fool around?
A. That is correct.
Q. Didn't have any drilling or loading or anything else to do and you would be through?
A. No, sir; I could get my drilling, what amount of drilling I wanted to do, by twelve o'clock,—11:30 or 12:00 and drag my outfit out to a safe place.
Q. By that time your work was over, by twelve?
A. Yes, sir.

Q. And from that time on you talked and entertained the boys?

A. Yes, sir.

Q. And did as you pleased?

A. Yes, sir.

Q. You started to work at the face during that time about 8:15?

A. I would be ready to go to drilling about that time.

Q. About 8:15?

A. Yes, sir.

Q. All right. How long did you say you had been working for the Republic Company, since 1936?

A. Since '36, that is right.

Q. You have been working in that same mine all the time?

A. That is right.

Q. Been working in the same place or have you changed places?

A. I have changed places.

Q. About how many places have you worked in there since you started working there?

A. Let me see.

Q. Can you remember where they are?

A. I first worked in 102, ninth stope.

Q. 102, hinth stope?

A. I went to 102, 11th stope.

Q. That is a stope in the same heading?

A. No; that is a stope above.

Q. All right, sir.

A. I stayed in that place, I would say, eight months.

Q. All right.

A. I went from there to 101, 31st stope.

Q. And stayed there about how long?

A. I worked that place out in about four months.

Q. When that place was worked out where did you go next?

A. Come back to 101, 28th stope.

Q. And how long before you worked that out?
A. I worked it out in about four months.
Q. All right, sir.
A. Then I come to 101, 27th stope, if I make no mistake. I believe that was the number.
Q. And you stayed there about how long?
A. About three or four months in that place.
Q. It looks like it took you about that long to finish a stope?
A. Yes, sir.
Q. All about the same length of time?
A. Yes, sir.
Q. All right, sir.
A. Then I moved around in 101 cross, I believe they call that place, to 36 stope.
Q. Take you about the same time to work that out?
A. Practically.
Q. About four months?
A. Yes, sir.
Q. Anywhere else up to about May 1, 1941?
A. Then I worked out three stopes in this section, 101 cross.
Q. You have been practically all the time in 101?
A. And 102, yes, sir.
Q. So your way of getting to the place of work from the top of the mine has been substantially the same?
A. That is right.
Q. Sometimes you have had to go a little further?
A. That is right.
Q. But that is the only difference, you have gone the same way?
A. Yes, sir.
Q. Everything you have done has been pretty much the same?
A. That is right.
Q. The mining has been systematic and regular?
A. Yes, sir.

Q. The tally house—what you call the tally house is the little house they have at the entrance of the mine?

A. That is right.

Q. And I believe you say what you do there, you hand in your check number?

A. Yes, sir.

Q. Now, the man that get it is a tally man?

A. Timekeeper.

Q. Does he keep your time?

A. Yes, sir.

Q. All he does is indicate whether or not your check is handed in; isn't that all he does?

A. No; he works in the time office.

Q. Do you know he keeps the time you are in the mine?

A. Tonnage time.

Q. Tonnage time?

A. Yes, sir.

Q. In other words, he gets the tonnage as it comes out?

A. He gets the tonnage sheet when it comes out.

Q. That is what you get your pay on?

A. That is right.

Q. As far as going in the mine, you hand him your check number?

A. That is right.

Q. That is all that is done there?

A. Yes, sir.

Q. I believe you said by looking at your board you could see whether you had a vacancy in your crew?

A. That is right.

Q. Sometimes you knew without looking at the board?

A. Yes, sir.

Q. Somebody might have told you he would be away?

A. Yes, sir.

Q. Fishing or sick or such a matter?

A. Yes, sir.

Q. And you would tell the mine foreman you had a vacancy?

A. Yes, sir.

Q. Has he at times called your attention to a vacancy if he noticed it first?

A. Yes, he has.

Q. In other words, the main thing is to get you a man?

A. Yes, sir.

Q. Does he supply you a man?

A. If there is one he can get, he will say, "Go over to Mr. Butler's crew."

Q. If there isn't one there, he will phone down below and get a man off the service crews?

A. No, sir. We don't use no service men in hand mucking.

Q. He will get a man somewhere?

A. Yes, sir, there will be one show up.

Q. Show up down at your place later on?

A. Yes, sir.

Q. How long have you been mining?

A. I went—

Q. In other words, with other people? How long have you been a miner?

A. I started to mining in 1916.

Q. Went to mining in 1916?

A. Yes, sir.

Q. Worked in various mines?

A. Yes, sir.

Q. Worked in Shannon, Mines?

A. Yes, sir.

Q. Shannon was the mine they had in Shades Valley?

A. Yes, sir.

Q. Went down in a shaft?

A. Yes, sir, a pitch.

Q. And when you got to the bottom you turned off to your various headings?

A. Yes, sir.

Q. Do you recall how long that shaft was?

A. Three thousand feet.

Q. When you worked at these other mines, were they slope mines?

A. They were slope mines.

Q. At all the mines you ever worked at it would be the business of the miner to furnish the lamps, whether it was carbide or electric lamps?

A. No,—we furnished carbide, but we never furnished no battery lamps.

Q. But your furnish your light?

A. Yes, sir; I bought a light.

Q. You got your carbide wherever you pleased?

A. Yes, sir, with the exception of Gulf States Steel. They gave us the carbide.

Q. The Gulf States Steel?

A. Yes, sir.

Q. Over at Shannon?

A. Yes, sir.

Q. The only difference between the carbide and electric lamp, the company rents you a light?

A. Yes, sir.

Q. Was that done at Woodward—the only place you have rented lights has been at Raimund?

A. That was the only place.

Q. That was the only place?

A. Yes, sir.

Q. You always got your light; had to have it to work in the mine?

A. Yes, sir.

Q. Can't work down there in the dark, can you, Mr. Butler?

A. No, sir.

Q. In the same way you furnish your clothes and shoes?

A. I do.

Q. I believe you say over at Raimund you bought your shovels and picks and things of that kind?

A. Shovels and picks and hammers and Stillson wrenches.

Q. Bought your tools, picks, shovels and hammers and wrenches?

A. And wrenches, yes, sir.

Q. I believe you said when you wanted to buy anything you would get a requisition and go to the supply house?

A. That is right.

Q. Did you always get it at the supply house when you were working for the company?

A. I did.

Q. Did you always go there and get it yourself or send one of your muckers, one of your men?

A. I have gone and gotten it myself and sometimes I sent my muckers.

Q. Just whichever was most convenient to you?

A. Yes, sir.

Q. You couldn't get into the supply house in the morning until the supply house opened?

A. No, sir.

Q. You would get them and take them to your men?

A. Give them to my men.

Q. Give them to your men up there and they would carry them up there?

A. Yes, sir.

Q. That has always been customary?

A. Since I have been there.

Q. And customary at other places where you have worked? That has been the practice in the district where you have had to get those tools always?

Mr. Harris:

We object. He can't tell what has been the practice always. The Tennessee Company—

A. At the mines where I have worked.

Q. I am talking about your work, Mr. Butler.

A. Yes, sir.

Q. I am not asking you about anything else.

You get your powder at the underground magazine station?

A. Yes, sir.

Q. And the caps, I suppose, you get them there too?

A. Yes, sir.

Q. And the underground magazine stations are moved as the mine progresses over at Raimund?

A. This mine at Raimund, it hasn't been moved up from 1936 up until May 1st.

Q. They are moved every now and then?

A. They have moved them since May 1st.

Q. I believe you say you got your dynamite and caps, powder, supplies,—there was a regular hour you sent for them?

A. Yes, sir.

Q. Between 11 and 12?

A. Yes, sir. I would go or send a man.

Q. That was during the regular shift?

A. Yes, sir.

Q. Between 11 and 12?

A. Yes, sir.

Q. Did you have any wedges when you were hand mucking?

A. No, sir.

Q. You didn't have any drill when you were hand mucking?

A. I had the big drill.

Q. You didn't have the small drills?

A. Jackhammer drill.

Q. You didn't have to put in hangers for the mechanical loader?

A. No, sir.

Q. The only drills you used were the tripod drills?

A. The tripod drills.

Q. Now, the way you described it going down the man skip in the morning with the exception of these pipe that they put up there,—I believe you said three in the car, was that right? I don't recall.

A. That is correct.

Q. With the exception of those three pipes, the practice has been the same all the time since you have been there?

A. That is right.

Q. In other words, you have been riding down the same way, going down the same way?

A. That is right.

Q. You said something about Mr. Kendrick getting hurt there once.

A. Yes, sir.

Q. That is Mr. Rufus Kendrick?

A. Yes, sir.

Q. He weighs close to 390 pounds, doesn't he?

A. I don't know how much he weighs.

Q. Great big man?

A. Big man.

Q. Did he get hurt getting in the skip or getting out?

A. Getting in.

Q. Were you there when he got hurt?

A. No, sir.

Q. Then you don't know—

A. I saw him afterwards.

Q. You saw him afterwards. Did he sprain his ankle?

A. He said he slipped and dislocated his shoulder.

Q. Were you there when Mr. Eddy got hurt?

A. No, sir.

Q. You are responsible—in going down—you are the boss of your crew up in the stope, aren't you?

A. I am.

Q. And outside of the few times the mine foreman or assistant mine foreman might come around to inspect your work during the shift always you are in sole charge there?

A. Yes, sir.

Q. You are there most of the time by yourself you and your crew?

A. Yes, sir.

Q. You have to be responsible for the work and are responsible for the work?

A. Yes, sir.

Q. And if you get short of a shovel or get short of dynamite, you can send your men wherever you want and get it?

A. If you get short of a shovel you have to buy it outside.

Q. Would you send a man out to get it?

A. No, sir.

Q. You would wait until the next shift?

A. Yes, sir.

Q. Is there any stuff you have to send out for?

A. No, sir, there is nothing I have to send out for.

Q. If a shovel breaks you go on and use what you have got?

A. Yes, sir.

Q. And—

A. I have drill steel, four, six, eight and ten.

Q. I see.

A. If I break them, I have to go back to the drill shop—

Q. Do you send them or go yourself?

A. No, I usually go myself. If I stop them I stop the pay.

Q. You go yourself?

A. Yes, sir.

Q. Do you have a driller?

A. No, sir, I am the driller.

Q. You would go yourself?

A. Yes, sir.

Q. Leave somebody in charge?

A. If I have—if I am on a mechanical loader I would have a drill helper.

Q. When you were hand loading—

A. The muckers would stay there and muck on during that time.

Q. How many muckers did you have at that time?—

A. I had anywhere from three to four, just whatever I needed.

Q. Well, as the contractor in charge of these stopes wherever you worked, if you got hurt or any of your men get hurt, it was your duty to turn in an injury slip?

A. It was their duty to turn in their own slip.

Q. You would turn in your own slip?

A. Yes, sir.

Q. To the mine foreman?

A. Yes, sir.

Q. Have you ever turned in a slip for any injury?

A. Yes, sir.

Q. What was that?

A. Well, one day I was sticking a hanger and the hammer glanced and hit me—

Q. Was that at your working place?

A. Yes, sir.

Q. I don't care about that. Did you ever turn in any injury for yourself, while you were riding down in the skip?

A. No.

Q. Or while you were walking the steps or haul ways?

A. No, sir.

Q. So far as you know did any of your men ever get hurt riding the skip and turn in any injury slip for it?

A. No.

Q. So far as you know, did any of your men get hurt walking down the steps or haul ways and turn in any slip for it?

A. No.

Q. You heard of Mr. Eddy and Mr. Kendrick—

A. I saw them myself.

Q. After they were hurt?

A. Yes, sir.

Q. Mr. Eddy was the mine foreman?

A. I said Eady. He was a service foreman.

Q. Mr. Kendrick was some other sort of workman?

A. He was a steel sharpener underground.

Q. Mr. Kendrick, I believe, was president of your local during a large part of this time; is that the same Kendrick?

A. Not since I have been there.

Q. All right, sir. I want to ask you about this thing you call the bull pen. The first bull pen you said anything about was up at the top near the entrance of the mine?

A. That is right.

Q. Is that just before you go into the mine?

A. It is after you go into the mine.

Q. After you go into the mine?

A. Yes, sir, it is—

Q. That is a fence or gate of some kind?

A. No. Just say inside those banisters (indicating in Court room) would be the bull pen and that gate would be where you would go out on the slope.

Q. I see. And they used that to see there were not too many on a slip at the time?

A. That is right.

Q. And that is all it was used for?

A. That is right; that is all.

Q. It was a protection against the weather too, wasn't it?

A. Protection against the weather, yes, sir. We could go in there.

Q. Got you out of the rain if it happened to be raining?

A. Yes, sir.

Q. That is what you mean by Mr. Harris' repeated questions of counting you in or counting you out?

A. That is right.

Q. The mine foreman or assistant mine foreman, as you say, after he saw there were sufficient come in there to ride, would shut the gate?

A. Yes, sir.

Q. He would let you in as you stood there?

A. No.

Q. What?

A. You would have to get in line.

Q. Just like when you are lined up at a mess hall, you take your plate, and come around, or a cafeteria where you get in line and come in?

A. Take your turn.

Q. That is the same thing that happens down below?

A. That is right.

Q. Same kind of a bull pen?

A. Yes, sir.

Q. They did, at that mine, have a place for the colored and a place for the white?

A. Yes, sir.

Q. And had a dividing place along the rail?

A. That is true.

Q. You didn't go down with your crew; you caught different skips?

A. Yes, sir.

Q. Different people rode down on different skips and rode out on different skips?

A. Get the one you caught; yes, sir.

Q. Where did you get with your crew; generally up at the stope where you worked?

A. Yes, sir.

Q. They would find you there or you would find them there?

A. Sometimes one way and sometimes the other.

Q. Just depending on what skip you caught?

A. Yes, sir.

Q. Just go on—

A. They would go ahead most of the time and drag the pipe line—

Q. That was not right there at the face?

A. No, sir.

Q. You quarried the face?

A. Yes, sir; I worked right at the face.

Q. Did that for your own protection?

A. Yes, sir.

Q. After the mine foreman or assistant mine foreman got a skip load, they generally designated someone to handle the skip?

A. No, sir.

Q. Just anyone?

A. Just anyone. They would say, "Rap it," and they would rap it and away she would go.

Q. The skip had a safety catch on it?

A. At Number 2.

Q. This skip that has got a top on part of it, did you ever ride in that?

A. I have since May 1st.

Q. You didn't before May 1st?

A. Yes, sir.

Q. In other words that skip didn't exist until they made changes under this May 1st ruling?

A. Yes, sir.

Q. And they are using it temporarily, or do you know about that?

A. I don't know about that temporarily.

Q. Now, you know this skip here, Exhibit Number 31, which has been presented in evidence; that is out at this new place. What slope is that?

A. That is Number 1.

Q. And previous to May 1st everybody went down Number 2?

A. Yes, sir.

Q. And previous to—since May 1st it has been used at Number 1?

A. Yes, sir.
Q. Wasn't used before May 1st?
A. Not for hauling them in.
Q. It was an ore skip and used for that purpose then?
A. Yes, sir.

Mr. Burr:
Judge, I think I am nearly through.

The Court:
All right.

Q. Now, in riding out of this place you were telling about, did you say you rode from the foot of the hill?
A. Yes, sir.
Q. From the foot of the hill? That was down in the mine, not in main slope?
A. That was on the main haulway, not on the main slope.
Q. Not on the main slope?
A. No, sir.
Q. As I understand, those of you that used it walked down into the mine?
A. Walked down and got in a bull pen—
Q. That is coming out?
A. Yes, sir.
Q. You don't ride at all going in?
A. No, sir.
Q. You walk in?
A. Yes, sir.
Q. And coming out you get to this place—what do you call it?
A. All I know is the mule lot.
Q. What?
A. When we get down the steep to the mule lot.
Q. That is a locomotive?
A. Yes, sir.

Q. A lot of the men walk out instead of riding out?

A. They walk rather than wait.

Q. Some of them walk out after the man trip is there?

A. No; they wouldn't walk then.

Q. Isn't it a fact most of the time they walk out instead of using the man trip?

A. Well, for a long time they didn't run the man trip regularly. They did run two, and then cut down to one.

Q. Wasn't that because the man didn't use it?

A. The company didn't run it on time.

Q. They walked out?

A. They got in that bull pen and couldn't get out and would have to stay until the run was over.

Q. Didn't the grievance committee, of which you were a member, take that up with the company and request them to change the schedule?

A. We did take it up.

Q. Did they change the schedule?

A. They would run it for a week and then run late.

Q. Then you would take it up with them again?

A. We took it up about twice.

Q. And then they would get late again?

A. Yes, sir.

Q. And you would take it up again?

A. No, sir.

Q. Do you recall how far back that has been?

A. I couldn't say.

Q. Just about?

A. The last two years.

Q. Would you say it was as far back as a year?

A. I wouldn't be positive—

Q. Just your best recollection. I don't want you to be positive.

A. It could have been over a year. I am certain it was over a year ago.

Q. You are still using the same way of going in and out of the mine?

A. No, sir. It is walking all the way out now.

Q. It is walking all the way out now?

A. Since May 1st.

Q. I mean coming out now, do you walk out the same way you used to walk in?

A. No, sir.

Q. How do you come out?

A. We come the first man way, Number 1. The men come that way, and the other men go out over 83 hill, Number 2.

Q. Are their walk ways the same as they were previous to May 1, 1941?

A. No. This walk way used to go that way, but it had been condemned and they had a fan house—

Q. They have fixed it up and use it as a walk way?

A. They use it.

Q. Are the walk ways you walk on now any smoother than they were before May 1, 1941?

A. This south man way is not as smooth.

Q. It is even worse than it was before May 1, 1941?

A. I wouldn't say—

Q. Not any better?

A. Not any better.

Q. The steps are not any steeper?

A. No, sir.

Q. The steps are not any steeper than before May 1, 1941?

A. They haven't been there long.

Q. About how long?

A. About a year.

Q. Those steps were put there on account of a fault?

A. Yes, sir.

Q. Do you know yourself how big that fault was or how thick it was?

A. I do not.

Q. But after that fault was struck, why, in order to get over into the ore—Let me have a picture of those steps.

The Court:
Exhibit 39.

Q. Now, those steps, you say, have been there about a year, you think?
A. That is about right.
Q. Are those wooden steps or concrete steps or what?
A. They are concrete steps.
Q. They are concrete steps?
A. Yes, sir.
Q. Have they got a railing on the side?
A. They have.
Q. And you walk up and down them?
A. Yes, sir.
Q. They walk up and down them?

The Court:
About the only way you could walk, isn't it?

Mr. Burr:
Yes, sir, that is what I say.

Q. On account of the fault, you couldn't get over—
A. The main haul way, slope A, is over here about thirty feet to the left.
Q. Could you travel it?
A. We did use it.
Q. What is that haulage way?
A. That is where all the ore goes down.
Q. Does it run pretty regularly when they are hauling the ore?
A. Yes, sir.
Q. It is against the rules of the company to walk on the main haulage way?
A. That is correct.
Q. That is for the safety of the men?
A. Yes, sir.

Q. Now, you say you have been paid on tonnage since you have been a contractor and that there are some days where you would not be able to get any tonnage and, therefore, didn't get any pay, you and your men.

Mr. Butler; when there is a rock fall or anything of that sort and you are not able to work at producing ore, you are paid by the hour, aren't you, for cleaning up stuff of that sort; that is true, isn't it?

A. Yes, sir.

Q. Now, I just want to have some idea of—What is your—what has been your average earnings down there, say, per month, during the past two years, net to you?

A. Oh, I wouldn't—I might say a hundred and fifty dollars a month.

Q. Well, is that your best judgment of what it is?

A. That is correct.

Q. Net to you a hundred and fifty dollars a month. What is the average earnings of—your muckers all get the same?

A. Yes, sir.

Q. Everybody in your crew except you get the same?

A. Yes, sir.

Q. What is the average earnings per day of your muckers?

A. I don't know.

Q. Have you got any judgment about it at all?

A. I wouldn't say.

Q. Isn't it four or five or six dollars a day?

A. Some of them make four or five or six dollars a day.

Q. Isn't it averaging about that?

A. I wouldn't say about their average, because I don't have anything to do with their time or pay whatever.

Q. I see. Now, never in your experience as a miner since you have been mining in Alabama,—you have never received any pay for the time you spent in traveling to and from the place where you produced the ore, have you, Mr. Butler?

A. I have not.

Q. And the custom and practice in all the mines you have ever worked in during all that period of time has always been not to pay the men for any time spent in traveling to and from the place where they produce the ore?

Mr. Harris:

We object to that question in that form for the reason the evidence affirmatively shows he has always worked on a contract basis, so the question of travel time while he was working on a contract basis, before the Wage and Hour Law went into effect, wouldn't have anything to do with it.

Mr. Burr:

Yes, it would, Your Honor.

The Court:

Overrule the objection.

Mr. Burr:

Answer the question.

A. What is it?

Mr. Burr:

Read it, Mr. Carr.

(Thereupon the reporter read the question last propounded as above recorded:)

Mr. Harris:

Same objection.

The Court:

Overruled.

Mr. Harris:
Except.

A. Yes, sir.
Q. That is true?
A. Yes, sir.
Q. Have you ever worked in any other mines other than the ore mines in Alabama?
A. I have worked in the coal mines.
Q. You have worked in the coal mines?

Mr. Harris:
We object to the coal mines.

Mr. Burr:
I want to ask him and get it in the record.

Mr. Harris:
Don't answer any questions until I object.

Mr. Burr:
I want to go up and ask him a few private questions.

The Court:
All right.

(Thereupon Mr. Burr whispered to the witness.)

Mr. Burr:
We offer to ask him, if Your Honor please, the same general questions I have asked other witnesses in reference to conditions in these coal mines right here.

Mr. Harris:
We object.

Mr. Burr:
Showing he has worked in coal mines and ore mines and vice versa, and we offer to make the showing. I will not set out the showing at length. I can tell you what he told me.

Mr. Harris:
What is the use of whispering and then blabbing?

Mr. Burr:
What is that?

Mr. Harris:
What is the use of whispering and then blabbing?

Mr. Burr:
I don't—

Mr. Harris:
I will withdraw the word, "blabbing" if you don't like it.

Mr. Burr:
I can put it in a showing.
I whispered to Mr. Butler to protect him.

The Court:
I will sustain the objection.

Mr. Burr:
We except in the same way we did before.

The Court:
Yes, sir.

Q. Did you ever work in any other area or mine other than in Alabama?
A. Not other than Alabama.

Mr. Burr:
That is all.

Re-Direct Examination.

Mr. Harris:
I can finish in two or three questions.

(By Mr. Harris):
Q. These hundred and seven steps were put up about a year ago, you say?
A. Yes, sir.
Q. Did the men climb that steep place before the steps were put there?
A. Yes, sir. They had a cable.
Q. They had a cable they caught hold of and pulled themselves up?
A. Yes, sir, and they had some ties. They were not uniform.
Q. I can't hear you.

The Court:
Talk louder.

A. They had some ties spiked across there and you could get up those pretty fair. It was full of rocks and water running over it all the time.
Q. Suppose you had drill steel and hose pipe—
A. You didn't get it below the place. We got it above.

The Court:
I don't understand the cable. Did it pull you up?

The Witness:
No, sir, it was stationary.

The Court:
You pulled up by it?

The Witness:
Yes, sir.

Q. The service men, would they go down on the man trips with the production men?
A. They did.
Q. And come out mixed up with the production men at the same time?
A. They did.
Q. You used one phrase in connection with Mr. Burr's questions. You used two words, and then stopped—

Mr. Burr:
I don't remember interrupting him.

Mr. Harris:
You didn't do it with any malignant purpose.

Mr. Burr:
If I had stopped him, you would have stopped me.

Q. What did you mean by getting your count?
A. I mean if you were thirty and I was thirty-one, I stayed there.
Q. You mean were you counting out numbers, or was the mine foreman counting as you passed by?
A. The mine foreman was counting as you passed by.
Q. Was he counting to himself or out loud?
A. He would count 1, 2, 3, 4, and so on until he got to 30. Sometimes he would count to himself. He didn't all the time.

Mr. Harris:
That is all.

Mr. Burr:
That is all.

The Court:
We will adjourn until two o'clock.

Mr. Harris:
I do want to ask one question. Can I ask it now?

The Court:
Just a moment. Order in Court.

Q. This cable you are talking about was just a hand rail?
A. It was about an inch and seven-eighths wire cable.
Q. It served as a hand rail?
A. Yes, sir.
Q. You didn't pull up with both hands?
A. You had some footing under you you could step up, but you were liable to slip and slide.
Q. That is during the period of time you told us you hadn't been hurt in that mine at all?
A. That is right.

Mr. Harris:
That is all.

The Court:
Court is adjourned until 2:00 o'clock.

(Whereupon, at 12:30 P. M., July 29, 1941, a recess was had until 2:00 P. M. of the same day.)

After Recess, 2:00 P. M.

Mr. Harris:
I want to recall Mr. John Butler for a moment.

3001 JOHN BUTLER thereupon resumed the stand, and having been previously sworn, testified further as follows:

Re-Direct Examination—Resumed.

(By Mr. Harris):

Q. Mr. Burr asked you what you made. I show you a printed sheet of paper with printed on it, "Republic Steel Corporation, Report of Earnings for Income Tax Purposes and Receipt for F. O. A. B. Tax Deductions. Employee's Name: John Butler. Period covered: 1940."

Did the Republic Steel Corporation furnish you with that?

Mr. Burr:

Let me see that. Let me see what you are talking about.

(Mr. Harris hands paper to Mr. Burr.)

Mr. Burr:

All right.

A. They did.

Q. And it shows earnings to be reported for income—

Mr. Burr:

Well, it shows what it shows.

Q. Over at the left it has F. O. A. B. Tax, $18.40. Did they pay your Federal Old Age Benefit Tax for your?

A. Yes, sir.

Q. And did they pay at the rate of a one percent tax?

A. Yes, sir.

Q. On your net income?

A. Yes, sir.

Q. So, when it shows your old age benefit tax was $18.40, that means your income was $1,840?

Mr. Burr:
We object.

A. Yes, sir.

Mr. Burr:
It is net income he payed tax on.

Mr. Harris:
We offer that.

Mr. Burr:
We have an objection to that. I want to ask him a question or two.

Mr. Harris:
Mark that as the next exhibit number.

The Clerk:
Exhibit 21,—it is 21.

(Thereupon a sheet headed "Republic Steel Corporation, Report of Earnings For Income Tax Purposes," and covering the period of 1940, was made Defendants' Exhibit No. 21, and was received in evidence.)

Q. Now, I have another one—

Mr. Burr:
What exhibit is that?

The Clerk:
21.

Q. I have another, the same name, John Butler, period covered, 1939.

Did the Republic Steel Corporation give you that?

A. They did.

Mr. Harris:

I offer that in evidence.

The Clerk:

Defendants' Exhibit 22.

(Thereupon a sheet headed "Republic Steel Corporation, Report of Earnings for Income Tax Purposes," and covering the period of 1939, was marked Defendants' Exhibit No. 22, and was received in evidence.)

Q. In the computation of your pay did the Republic Company have charges of any kind which they deducted from your gross earnings?

A. Powder expenses.

Q. And what was the price at which they deducted powder from your earnings?

A. $1125.

Q. You mean that was, for a particular year, $1125?

A. That was for the 1940 year.

Q. Do you happen to remember how much they deducted for powder in '39?

A. No, sir; I can't recall that.

Mr. Harris:

All right. You say you want to see those?

Mr. Burr:

When you get through I want to ask him a question about them.

Mr. Harris:

I am through.

Mr. Burr:

Your Honor understands we object to the last one just like we did the first one.

The Court:

Yes.

Re-Cross Examination.

(By Mr. Burr):

Q. Mr. Butler, you got a statement every two weeks or every week?

A. A pay statement?

Q. Yes, a pay statement.

A. Every two weeks.

Q. That statement was attached to a receipt which you signed and handed in?

A. You got a statement and signed it and handed it in at the window and got your pay.

Q. You got a statement and you would take that and go to the pay window and sign the receipt and get the money that was coming to you?

A. In an envelope.

Q. Now, do you know what your net payments amounted to in the year of 1938?

A. One was $2800, one was sixteen hundred and something, and the other eighteen hundred and forty.

Q. This was all they put on there; the expenses to be reported for income tax were $2,369.29; that is all on there?

A. Yes. That was what I was cut for Federal Old Age Pension.

Q. That hasn't anything to do with this entire item?

A. That was my gross earnings without any powder.

The Court:

What is the amount.

Q. Down here, "Earnings to be reported for income tax, $2,969.76."

A. That was gross and not net.

Q. You say your net earnings was how much?

A. They gave me powder receipts for $1125, which I turned in against this when I made out my income.

Q. You turned that in against this when you made out your income?

A. Yes, sir.

Q. But your receipts will show the amount you got each pay day?

A. Yes, sir, what I drew.

Mr. Burr:
That is all.

Mr. Harris:
Come down.

(Witness excused.)

Mr. Harris:
Call Louis Tarrant.

3005 LOUIS TARRANT (C), being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. How old are you, Louis?

A. Thirty-nine.

Q. Where were you born?

A. Born in Dallas County, near Marion, Alabama.

Q. How high did you go in school?

A. Eighth Grade.

Q. Do you work for the Republic Iron & Steel Corporation?

A. Yes, sir.

Q. How long have you been working for them?

A. I have been working for them my last time since '29.

Q. '29 or '39?

A. '29.

Q. Have you ever seen that book of rules for the prevention of accidents, ore mines and quarries, Birmingham Division, Republic Iron & Steel Corporation?

A. Yes, sir.

Q. Dated November 1, 1935?

A. Yes, sir.

Q. Would you say that was the book that was in effect from '35, up to May 1, 1941, or do you know?

A. I don't know, but it was one just like that.

Q. What is your best judgment? Is that the one or not?

A. My best judgment, that is the one.

Mr. Harris:

I will ask you to mark this for identification, please.

(Thereupon a booklet entitled, "Rules for the Prevention of Accidents, Ore Mines and Quarries, Birmingham Division, Republic Iron & Steel Corporation," was marked for identification Defendant's Exhibit No. 23.)

Q. What kind of work do you do for the Republic Company?

A. I am a drill man. They commonly call them contractors.

Q. You have a crew under you?

A. Yes, sir.

Q. White or colored?

A. Colored.

Q. How many in your crew?

A. I have two men on day shift and three men on night shift.

Q. Do you work sometimes on the night shift?

A. No, sir, only day. The men work at night.

Q. Do you have charge of the night shift and day shift?

A. Yes, sir.

Q. You don't work both shifts yourself?

A. It is drilled in the day and load ore at night, and two muckers go back in the day and load the ore the other muckers don't load.

Q. Is there any other man that drills and shoots in the stope where you work or are you the only driller and shooter there?

A. I am the only driller and shooter there.

Q. What they muck at night and muck in the day time is the ore you shoot down?

A. Yes, sir.

Q. Now, on the day shift from October 24, 1938, up until May 1, 1941, what time would you reach the change house every morning?

A. I would usually leave around six o'clock, five minutes to six, along like that.

Q. Did you have any brass check?

A. Yes, sir.

Q. Where did you leave it?

A. We deposited it in the tally house on the top near the collar of the mine.

Q. All right. Where would you get your electric battery?

A. I got it right at the—Well, the tally house and battery house is all adjoining. Got it there close by where we checked in.

Q. All right. Now, then, when you got ready to go down on the trip, did the colored men get in the same bull pen as the white men or were they counted out in the same bull pen, or get in different ones?

A. We got in the same bull pen, but there was a separate compartment in there for the white and colored, the white to the right and the colored to the left.

Q. Did anybody count the colored men out as they left the bull pen?

A. Yes, sir.

Q. Who did that?

A. Usually the mine foreman,—the section foreman or general foreman.

Q. And coming back out the mine did anybody count you out of the bull pen?

A. Yes, sir.

Q. Who did that?

A. The section foreman usually would count us, —not the same one, but one of the others.

Q. How far did you have to walk from October 24, 1938, up until May 1, 1941, after you left the main man-loading station?

A. My best judgment, I would say it was around two miles,—about two miles.

Q. Up hill and down hill?

A. Up hill and down hill.

Q. When you finished shooting at the end of the day and walked that two miles back to the main man loading station, would you and your crew be dry or wet with sweat?

A. Be very hot, be wet when you would make that trip.

Q. What time did you get out on top?

A. Usually, after shooting at 3 o'clock, get out on top anywhere from 3:50 to, you might, 4:05, something in that neighborhood.

Q. What time would you say you turned in your brass check at the mouth of the mine?

A. Around six o'clock.

Q. And you picked up your brass check around 3:50 or 4 o'clock?

A. Yes, sir.

Q. Louis, during that period were you paid on a time basis or on a tonnage basis?

A. Paid on a tonnage basis.

Q. Did you have any yardage work that you did for the Republic Company on which they paid you if you were not producing on a tonnage basis?

A. No, sir; didn't pay any yardage at all.

Q. Well, suppose you had bad conditions in your stope, a rock fall, did you have to clear that up so you could work?

A. Yes, sir. Usually myself and my crew would clear that up, but if you are on that a whole day they usually pay you a day rate.

Q. Usually what?

A. If you were on it a whole day they would pay you a day rate, and if not, so many hours for cleaning up.

Q. Suppose you were on it three hours, and during that three hours you were not mining ore; would they pay you anything?

A. Usually have a drill man,—if you have a drill man, they would tell him he could go on drilling and the muckers would get it cleaned up in three hours. You can have drilling and shooting going on for the next shift, but they would pay the men that were cleaning it up,—they would pay them for three hours work.

Q. Take yourself and three men, what is your average day's work?

A. Myself and three men, they will load six cars. Myself, I will do the drilling and drill around eight hours.

Q. How much does a car hold out there around Raimund?

A. They are using steel cars now which they estimate will hold not less than four tons.

Q. So you and your two men would get around 24 tons?

A. Yes, sir.

Q. And the night men, the three muckers, what would they get a shift?

A. Usually the three muckers would get around 35 or 37 tons.

Q. All right. If, on a Monday and Tuesday night you produced 67 tons, and on Wednesday and Thursday you produced 41 tons, would you make as much on Wednesday and Thursday as you did on Monday and Tuesday?

A. No, sir.

Q. When you got your pay did the company pay you by check or by folding money or hard money?

A. They paid me in folding money, and, of course, less than a dollar, they paid me in hard money.

Q. Pay you in an envelope?

A. Yes, sir.

Q. I notice that envelope is dated July 15, 1941. Is that the envelope that the Republic Steel Corporation paid you with—

A. Yes, sir.

Q. On July 15, 1941?

A. Yes, sir.

Q. Now, how often did they pay you, every week or every two weeks?

A. Every two weeks.

Q. Did that represent two weeks pay?

A. Yes, sir.

Q. I notice at the top of that it has the word "Hours", and a blank; over at the left it has, "T. T."

A. Yes, sir.

Q. Do you know when they started putting "T. T." on your envelope?

A. Since May 1st.

Q. Since May 1st?

A. Yes, sir.

Q. Before May 1st, do you recall getting any envelope where they had anything on your time?

A. Not unless I had worked some hours, had gotten some hours.

Q. Did you ever get any hours?

A. Occasionally along I would get some hours.

Mr. Harris:
We offer this as the Defendants' next exhibit.

The Clerk:
Defendants' Exhibit No. 24.

Mr. Burr:
We object to that and take an exception.
Twenty-four, you say?

The Clerk:
It is 24, yes, sir.

Mr. Burr:
Let me see it, please, sir.

Go ahead, Crampton.

(Thereupon a pay envelope issued by Republic Steel Corporation to Louis Tarrant, dated July 15, 1941, was marked Defendants' Exhibit No. 24.)

Q. Louis, when did you join the union?
A. I first joined the union when it was organized in 1933.
Q. Have you been a member ever since?
A. No, sir. For a period of approximately 14 months I was out of the union.
Q. Were you at work then?
A. Yes, sir, I was working.
Q. What year was it for 14 months you were out of the union?
A. That was probably from February of 1934 until the end of 1935.
Q. Now, in 1936—were you an officer of the union in 1935? I will change my question.
A. No, sir. I was just a member in 1935.

Q. Well, was the membership, the attendance in 1936, better than it was in 1935?

A. It was better in '35 than it was in '36.

Q. Was the attendance as good in '37 as it was in '36?

A. The attendance was better in 1936 than it was in 1937.

Q. How many men on an averaged in 1937, would you find at a union meeting?

Mr. Burr:

Your Honor understands we have an objection to all these questions, and exception.

The Court:

All right.

A. How many men in a meeting, did you say?

Q. Yes, just on an average?

A. Usually, round at that time, four or five or six of us.

Q. At a meeting?

A. Yes, sir.

Q. And then in 1938 did your membership or the attendance increase?

A. Along about in 1938, I think that I recall—along at the time of the settlement of the T. C. I. controversy through the Labor Board, our membership began to increase, and, of course, since that time it has increased very much.

Q. Louis, do you recall any single pay day that you have worked for the Republic Steel Company where your pay for the whole period was figured on a time basis?

A. No, sir.

Mr. Harris:

You can take him.